Explanatory Notes Relating to the Goods and Services Tax/Harmonized Sales Tax, Excise Levies and Other Taxes and Charges

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act*, various regulations and related texts. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Excise Tax Act

Clause 1
Evidence
ETA
106.1

Existing section 106.1 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of this Act (which means the Act except Part IX and Schedules V to X).

Subclause 1(1)
Date electronic notice sent
ETA
106.1(3.1)

Subsection 106.1(3.1) allows for the electronic communication of certain notices.

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing subsection 106.1(3.1) provides that a notice or other communication will be, for the purposes of this Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (3.2), subsection (3.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 1(2)
Date electronic notice sent – business account
ETA
106.1(3.2)

New subsection 106.1(3.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (3.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Clause 2
Definitions
ETA
123(1)

Existing subsection 123(1) of the Act contains definitions that are used throughout Part IX of the Act.

Subclauses 2(1) and (2)
Definition "financial instrument"
ETA
123(1)

The definition "financial instrument" is primarily relevant to the definition "financial service" in subsection 123(1) of the Act. A financial instrument is anything described in any of paragraphs (a) to (i) of the definition "financial instrument".

The definition "financial instrument" is amended to add new paragraph (b.1) and to amend paragraph (h).

New paragraph (b.1) describes any right, whether absolute or contingent, to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, of the revenue, or of the income, of a corporation that does not have capital divided into shares. However, paragraph (b.1) does not include a right to receive an amount as a creditor. For example, a contingent right, analogous to those of corporate shareholders, to receive a portion of a corporation without share capital's income for the year, or a share of the corporation's capital on its dissolution, would constitute a right described by paragraph (b.1).

Existing paragraph (h) describes guarantees, acceptances and indemnities in respect of any financial instrument described in paragraph (a), (b), (d), (e) or (g) of this definition. Paragraph (h) is amended so that it also describes guarantees, acceptances and indemnities in respect of any financial instrument described in new paragraph (b.1).

The amendments to the definition "financial instrument" are deemed to have come into force on August 10, 2022.

Subclause 2(3)
Definition "Lloyd's association"
ETA
123(1)

Subsection 123(1) is amended to add the new definition "Lloyd's association".

The new definition "Lloyd's association" is used in new section 149.1 and amended section 217.1 of the Act. A Lloyd's association is an association of persons that has the following attributes:

- The association is formed on the plan known as Lloyd's; and
- Under this plan, each member of the association participating in an insurance policy (as defined in this subsection) becomes liable for a stated, limited or proportionate part of the whole amount payable under the insurance policy.

As a result, the definition "Lloyd's association" is restricted to associations (commonly called syndicates) of one or more persons that are each members of the Society of Lloyd's (the Society incorporated by the Lloyd's Act, 1871 (U.K.), 34 Vict., c. 21) and that together issue insurance policies under the supervision of the Society.

As a Lloyd's association is an association, which is included in the definition of "person" in this subsection, a Lloyd's association is a person for the purposes of Part IX of the Act.

The new definition "Lloyd's association" is deemed to have come into force on August 10, 2022.

Clause 3
Exclusion of interest and dividend
ETA
149(4)

Existing subsection 149(4) of the Act provides a rule for the purposes of determining whether a person is a financial institution throughout a taxation year of the person under the *de minimis* tests in paragraphs 149(1)(b) and (c) of the Act. It provides that interest and dividend income from a corporation that is related to a person (within the meaning of subsection 126(2) of the Act) is not to be included in

- the person's "financial revenue" for a taxation year of the person for the purpose of paragraph 149(1)(b); and

- the person's income for a taxation year, from interest, fees or other charges with respect to the making of an advance, the lending of money, the granting of credit, or credit card operations, for the purpose of paragraph 149(1)(c).

Where, for example, a particular corporation is controlled by person that is an individual, a trust or another corporation, subsection 149(4) will allow the person to exclude interest and dividends received from the particular corporation, as subsection 126(2) provides such a person would be related to the particular corporation (through adoption of the related person rules in subsections 251(2) to (6) of the *Income Tax Act*). However, if the particular corporation were controlled by a partnership, subsection 149(4) would not allow the partnership to exclude interest and dividends received from the particular corporation, as subsection 126(2) does not make a partnership related to a corporation that it controls.

Subsection 149(4) is amended to allow partnerships to benefit from the rule. Subsection 149(4) now provides that interest and dividend income from a particular corporation is not to be included in a partnership's "financial revenue" for a taxation year of the person for the purpose of paragraph 149(1)(b) and is not to be included in the partnership's income for a taxation year, from interest, fees or other charges with respect to the making of an advance, the lending of money, the granting of credit, or credit card operations, for the purpose of paragraph 149(1)(c), where the particular corporation is controlled by a person described in subparagraph 149(4)(a)(i), (ii) or (iii), or by a combination of such persons. Subparagraph (i) describes the partnership itself. Subparagraph (ii) describes another corporation controlled by the partnership. Subparagraph (iii) describes another corporation related to a third corporation controlled by the partnership.

The amendment to subsection 149(4) applies to taxation years that begin after August 9, 2022.

Clause 4
Lloyd's associations
ETA
149.1

New section 149.1 of the Act contains rules that apply to a Lloyd's association (as defined in subsection 123(1) of the Act) for the purposes of Part IX of the Act.

New section 149.1 is deemed to have come into force on August 10, 2022.

149.1(1) – Continuation of Lloyd's association

New subsection 149.1(1) of the Act applies where a Lloyd's association is registered under Subdivision D of Division V and would, in the absence of this subsection, be regarded as having ceased to exist (for example if the Lloyd's association were to be dissolved). In this situation, subsection 149.1(1) provides that the Lloyd's association is deemed for the purposes of Part IX

of the Act not to have ceased to exist until the registration of the Lloyd's association is cancelled by the Minister of National Revenue under section 242 of the Act.

149.1(2) – Continuation of Lloyd's association

New subsection 149.1(2) of the Act contains a deeming rule that generally provides that a Lloyd's association is deemed to remain the same Lloyd's association despite a change in the membership of the association. Subsection 149.1(2) applies where the membership of a Lloyd's association changes (i.e., existing members leave or new members are added) but the unique number assigned to the Lloyd's association by the Council of Lloyd's (i.e., the council constituted by section 3 of the *Lloyd's Act 1982* (U.K.), 1982, c. 14) does not change as a result of the change of membership. Where these conditions are met, the Lloyd's association is deemed for the purposes of Part IX of the Act to continue as the same Lloyd's association despite the change in membership. As a result, where for example subsection 149.1(2) applies to a Lloyd's association that adds a new member, the change in membership will not affect the registration status or the tax liability of the Lloyd's association.

149.1(3) – Policies issued by Lloyd's association

New subsection 149.1(3) of the Act contains a deeming rule that applies for the purposes of Part IX of the Act. Subsection 149.1(3) applies where the members of a Lloyd's association participate in an insurance policy (as defined in subsection 123(1) of the Act) such that each member becomes liable for a stated, limited or proportionate part of the whole amount payable under the insurance policy. In this circumstance, subsection 149.1(3) deems the Lloyd's association to have issued the insurance policy and to be insuring any risk that is insured under the policy.

149.1(4) – Reinsurance

New subsection 149.1(4) of the Act generally concerns the situation where members of a Lloyd's association enter into a type of reinsurance agreement (commonly called "reinsurance to close") with either the members of another Lloyd's association or with another person (generally an insurance corporation). Under such an agreement, the members of the other Lloyd's association or the other corporation generally agree to assume the liabilities of the members of the first Lloyd's association respecting the first Lloyd' association's insurance policies. Subsection 149.1(4) contains rules respecting the insurance business of the first Lloyd's association and creates a joint and several, or solidary, liability in respect of the tax liabilities of that Lloyd's association.

Specifically subsection 149.1(4) applies where a particular agreement meets two conditions.

The first condition is that the particular agreement is entered into by the members (referred to in subsection 149.1(4) as the "reinsured members") of a particular Lloyd's association and either

- the members (referred to in subsection 149.1(4) as the "reinsuring members") of another Lloyd's association; or

- another person that is a party to the particular agreement otherwise than as a member of a Lloyd's association.

(It should be noted that, while "reinsurance to close" agreements exist between the existing members of a Lloyd's association and the new members of the same Lloyd's association, such an agreement would not satisfy the first condition and would not be subject to subsection 149.1(4). Instead, this situation would be treated as a change in membership within the same Lloyd's association and would be subject to the deeming rule in subsection 149.1(2).)

The second condition is that, under the terms of the particular agreement, the reinsuring members or the other person, as the case may be, agree to discharge, procure the discharge of or indemnify the reinsured members against the known and unknown liabilities of the reinsured members arising out of one or more insurance policies (referred to in subsection 149.1(4) as the "covered policies").

Where these two conditions are met in respect of a particular agreement, subsection 149.1(4), specifically the rules in paragraphs 149.1(4)(a) and (b), apply in respect of the particular agreement to the particular Lloyd's association, the reinsuring members and the other Lloyd's syndicate or, as the case may be, to the particular Lloyd's syndicate and the other person.

Paragraph 149.1(4)(a) provides that, for the purposes of Part IX of the Act, the other Lloyd's association or the other person, as the case may be, is deemed to be an insurer. As a result, the other Lloyd's association, or the other person, would be subject to all the rules that apply under Part IX to an insurer (as defined in subsection 123(1) of the Act). Furthermore, paragraph 149.1(4)(a) deems, for the purposes of Part IX of the Act, the other Lloyd's association or the other person, as the case may be, to have issued the covered policies of the particular agreement and to be insuring any risk that is insured under the covered policies. Paragraph 149.1(4)(a) applies to the other Lloyd's association or the other person, as the case may be, as long as the agreement is in effect.

Paragraph 149.1(4)(b) provides that the following combinations of persons are jointly and severally, or solidarily, liable for the obligations described in subparagraphs 149.1(4)(b)(i), (ii), (iii) and (iv):

- the particular Lloyd's association, the other Lloyd's association and the reinsuring members, in the case where the agreement is between the reinsured members and the reinsuring members; or

- the particular Lloyd's association and the other person, in the case where the particular agreement is between the reinsured members and the other person.

Subparagraph 149.1(4)(b)(i) describes the payment of any amount of tax under Division II, III or IV.1, section 218 or subsection 218.1(1) of the Act that becomes payable by the particular Lloyd's association, but only to the extent that the amount can reasonably be considered to relate to the covered policies.

Subparagraph 149.1(4)(b)(ii) describes the remittance of any amount of net tax for any reporting period of the particular Lloyd's association, but only to the extent that the amount can reasonably be considered to relate to the covered policies.

Subparagraph 149.1(4)(b)(iii) describes the payment of any amount of tax under section 218.01 or subsection 218.1(1.2) of the Act that is determined for a specified year (as defined in section 217 of the Act) of the particular Lloyd's association, but only to the extent that the amount can reasonably be considered to relate to the covered policies

Subparagraph 149.1(4)(b)(iv) applies where

- prior to the entering into of the particular agreement, the then members of the particular Lloyd's association had entered into an earlier agreement with the members of a third Lloyd's association whereby the members of the particular Lloyd's association agreed to discharge, procure the discharge of or indemnify the members of the third Lloyd's association against the known and unknown liabilities of the reinsured members arising out of certain covered insurance policies; and

- under the earlier agreement, the then members of the particular Lloyd's association agree to discharge, procure the discharge of or indemnify the members of the third Lloyd's association against the known and unknown liabilities of the members of the third Lloyd's association arising out of a group of insurance policies that includes one or more of the covered policies of the particular agreement.

Subparagraph 149.1(4)(b)(iv) describes the payment or remittance of any amount that the particular Lloyd's association and the third Lloyd's association are jointly or severally, or solidarily, liable for as a result of the application of paragraph 149.1(4)(b) in respect of the earlier agreement, but only to the extent that the amount can reasonably considered to relate to the particular insurance policies that are covered both by the particular agreement and by the earlier agreement. Therefore, in the circumstances in which this subparagraph applies, it has the

effect of making the particular Lloyd's association, the other Lloyd's association and the reinsuring members or, as the case may be, the particular Lloyd's association and the other person jointly and severally, or solidarily, liable for the payment or remittance of any amount described in any of subparagraphs 149.1(4)(b)(i) to (iv) that the third Lloyd's association is liable to pay or remit, or is jointly and severally liable for, but only to the extent that that amount can reasonably be considered to relate to the particular insurance policies.

Consider for example the case where

- In 2020, Lloyd's association #1 issues insurance policies insuring risk ordinarily situated in Alberta ("the Alberta policies");

- On January 1, 2021, the members of Lloyd's association #1 and the members of Lloyd's association #2 enter into an agreement whereby the members of Lloyd's association #2 agree to discharge, procure the discharge of or indemnify the members of Lloyd's association #1 against the known and unknown liabilities arising out of the Alberta policies;

- On January 1, 2023, the members of Lloyd's association #2 and the members of Lloyd's association #3 enter into an agreement whereby the members of Lloyd's association #3 agree to discharge, procure the discharge of or indemnify the members of Lloyd's association #2 against the known and unknown liabilities arising out of the Alberta policies;

- During 2023 and 2024, Lloyd's association #3 issues insurance policies insuring risk ordinarily situated in Nova Scotia ("the Nova Scotia policies");

- On January 1, 2025, the members of Lloyd's association #3 and the members of Lloyd's association #4 enter into an agreement whereby the members of Lloyd's association #4 agree to discharge, procure the discharge of or indemnify the members of Lloyd's association #3 against the known and unknown liabilities arising out of both the Alberta and the Nova Scotia policies; and

- Each of Lloyd's association #1, 2, 3 and 4 have a calendar year as their specified year.

In this circumstance, as a result of the application of paragraph 149.1(4)(b),

- If in 2026 the Minister of National Revenue were to assess Lloyd's association #2 for tax under section 218.01 that is determined for its 2022 specified year in respect of the Alberta policies, Lloyd's association #3 (and its members) and Lloyd's association #4 (and its members) would be jointly and severally, or solidarily, liable with Lloyd's association #2 for the payment of this tax.

- If in 2027 the Minister of National Revenue were to assess Lloyd's association #3 for tax under section 218.01 and subsection 218.1(1.2) that is determined for its 2024 specified year in respect of the Alberta and the Nova Scotia policies, Lloyd's association #4 (and its members) would be jointly and severally, or solidarily, liable with Lloyd's association #3 (and its members) for the payment of this tax.

Clause 5
Election for exempt supplies
ETA
150

Section 150 of the Act entitles two corporations that are members of the same closely related group that includes a listed financial institution to make an election to treat certain supplies between them as exempt supplies of financial services (as those terms are defined in subsection 123(1) of the Act).

Section 150 is amended to modify paragraph 150(4)(c) and add new subsection 150(4.1) in order to clarify the limitation period to file a valid revocation of an election made between two corporations under subsection 150(1).

The amendments to section 150 are deemed to have come into force on August 10, 2022.

Subclause 5(1)
Effect of election
ETA
150(4)

Subsection 150(4) provides that an election made by members of a closely related group under subsection 150(1) is effective for the period beginning on the day specified in the election and ending on the earliest of the three days specified in paragraphs 150(4)(a), (b) and (c). Existing paragraph 150(4)(c) stipulates a day that is both

- specified by the members in a revocation in prescribed form containing prescribed information filed jointly by the members in prescribed manner; and

- at least 365 days after the day that is specified in the election as the first day on which it is effective.

Subsection 150(4) is amended to remove the requirements that the revocation be made in prescribed form containing prescribed information and be filed jointly by the members in prescribed manner. These requirements are instead moved to new subsection 150(4.1), which also contains additional requirements for making a valid revocation.

Subclause 5(2)
Form of revocation
ETA
150(4.1)

New subsection 150(4.1) specifies the requirements that must be met in order to make a valid revocation of an election made by two members of a closely related group under subsection 150(1). Specifically, the revocation must comply with each of paragraphs 150(4.1)(a), (b) and (c).

Paragraph 150(4.1)(a) requires that the revocation be made jointly by the members in prescribed form containing prescribed information.

Paragraph 150(4.1)(b) requires that the revocation specify the day on which the revocation is to become effective.

Paragraph 150(4.1)(c) requires that the revocation be filed with the Minister of National Revenue on or before

- the particular day that is the first day on or before which either of the two members is required to file a return under Division V for its reporting period that includes the day specified in the revocation; or

- any day after the particular day that the Minister may allow.

While the requirements in paragraphs 150(4.1)(a) and (b) were previously contained in paragraph 150(4)(c), the requirement in paragraph 150(4.1)(c) is new and it generally limits the ability of parties to an election made under subsection 150(1) to make a retroactive revocation of that election. For example, consider two corporations that have made a valid election under subsection 150(1) that is effective from July 1, 2015 and now wish to make a revocation of this election with a specified effective date of May 15, 2025. If the first corporation's reporting period is a fiscal year ending on March 31 and if the second corporation's reporting period is a calendar month, then paragraph 150(4.1)(c) requires that the revocation be filed by June 30, 2025 (unless the Minister of National Revenue allows the revocation to be filed on a later day). June 30, 2025 is the deadline for filing the revocation since it is the first day on or before which any of the two corporations is required to file a return under Division V for the reporting period of the corporation that includes May 15, 2025. (This because the second corporation must file its return for its reporting period that includes May 15, 2025 (i.e., its May 1-May 31 2025 reporting period) by June 30, 2025.) If the two corporations do not file this revocation with the Minister until a later date (e.g., September 15, 2025) and if the Minister were not to allow the revocation to be filed on or after that later date, the revocation would not be a valid revocation and the election under subsection 150(1) would remain in force after May 15, 2025.

Clause 6
Election for nil consideration
ETA
156

Section 156 of the Act allows certain members of a qualifying group of closely-related corporations and/or Canadian partnerships (as those terms are defined in subsection 156(1)) to elect under subsection 156(2) to treat certain supplies between them as having been made for nil consideration. In order to make the election, the members generally need to be resident in Canada and engaged exclusively in commercial activities. The effect is that electing members need not account for otherwise fully recoverable tax on those supplies.

Currently a qualifying group is limited to a group of corporations, a group of Canadian partnerships (as defined in subsection 156(1)) or a group of Canadian partnerships and corporations.

Section 156 is amended to expand the concept of qualifying group to allow a group of corporations and partnerships, each closely related to the other under subsection 156(1.1), to constitute a qualifying group, even if a partnership in the group has a member that is a corporation or a partnership that is not resident in Canada. However, the amendments would not change the existing requirement that any member of a qualifying group making an election under subsection 156(2) must be a corporation resident in Canada or a partnership, each member of which is resident in Canada.

Section 156 is also amended in respect of the definition “temporary member” in subsection 156(1) and in respect of subsection 156(2.1).

Subclauses 6(1) to (7)
Definitions
ETA
156(1)

Existing subsection 156(1) provides definitions that apply for the purposes of section 156. The amendments to subsection 156(1) delete the definition “Canadian partnership”, amend the existing definitions “qualifying group”, “qualifying member” and “temporary member” and add a new definition “specified partnership”.

The amendments to the definition “temporary member” in subsection 156(1) are deemed to have come into force on August 9, 2022. The other amendments to subsection 156(1) are deemed to have come into force on August 10, 2022.

"Canadian partnership"

The existing definition "Canadian partnership" means a partnership each member of which is a corporation or a partnership and is resident in Canada.

The definition "Canadian partnership" is repealed. The repeal is consequential to the addition of new definition "specified partnership" and changes in wording to the definition "qualifying member".

"qualifying group"

The existing definition "qualifying group" refers to a group whose members are entitled to make an election under subsection 156(2) if they qualify as "specified members". A qualifying group means a group of persons described by either paragraph (a) or (b) of the definition.

Paragraph (b) describes a group comprised of Canadian partnerships, or of Canadian partnerships and corporations, that are all closely related to one another, according to the rules set out in subsections 156(1.1) and 156(1.2).

Paragraph (b) is amended so that it now describes a group consisting of specified partnerships, or of specified partnerships and corporations, that are all closely related to one another, according to the rules set out in subsections 156(1.1) and 156(1.2). The amendment broadens the scope of qualifying group as a specified partnership may now be a member of a qualifying group even if some or all of the members of the partnership are not resident in Canada (i.e., even if the specified partnership would not meet the existing test of being a "Canadian partnership").

"qualifying member"

The existing definition "qualifying member" means a registrant (as defined in subsection 123(1) of the Act) that is a corporation resident in Canada or a Canadian partnership and that meets the conditions contained in paragraphs (a) to (c) of the definition.

The definition "qualifying member" is amended to replace the requirement that the registrant be a corporation resident in Canada or a Canadian partnership with a requirement that the registrant be a corporation resident in Canada or a specified partnership, each member of which is resident in Canada. The amendment is consequential to the repeal of the definition "Canadian partnership" and the addition of new definition "specified partnership".

"temporary member"

Existing definition "temporary member" in subsection 156(1) refers to a particular corporation that exists to receive a transfer of property from an existing corporation as part of a transaction undertaken to comply with the requirements of paragraph 55(3)(b) of the *Income Tax Act* (a

"butterfly" transaction). To be a temporary member, the particular corporation must meet all the requirements in paragraphs (a) to (h) of the definition.

Paragraphs (f) and (h) of the definition "temporary member" are amended as follows.

Existing paragraph (f) requires that the particular corporation receive a supply of property made in contemplation of a distribution (within the meaning assigned by subsection 55(1) of the *Income Tax Act*) that is made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act*. Furthermore, that supply must be from a "distributing corporation" referred to in subparagraph 55(3)(b)(i) of the *Income Tax Act* that is a qualifying member of a qualifying group (as those terms are defined in this subsection) of which the particular corporation is also a member.

Paragraph (f) is amended to remove the requirement that the reorganization be one described in subparagraph 55(3)(b)(i) of the *Income Tax Act* and instead adds conditions limiting the type of property that can be included in the supply that the corporation receives and generally requiring that the consumption, use or supply of the property before and after the supply be exclusively in the course of commercial activities.

Specifically, amended paragraph (f) now requires that the particular corporation receive a supply of property that meets the conditions described in subparagraphs (f)(i), (ii) and (iii).

Subparagraph (f)(i) requires that the supply be made by another corporation that is a qualifying member of a qualifying group of which the particular corporation is a member and that the supply be made in contemplation of a distribution that is made in the course of a reorganization whereby the shares of the particular corporation are to be transferred upon the distribution to one or more other corporations (referred to as "transferee corporations").

Subparagraph (f)(ii) requires that the supplied property includes property that is neither a financial instrument (as defined in subsection 123(1) of the Act) nor property having a nominal value

Subparagraph (f)(iii) requires that all or substantially all of the supplied property (excluding any of the supplied property that is a financial instrument or property having a nominal value)

- was last manufactured, produced, acquired or imported by the other corporation for consumption, use or supply exclusively in its commercial activities;

- is not consumed, used or supplied by the particular corporation otherwise than in the course of its commercial activities; and

- may reasonably be expected to be consumed, used or supplied, within 12 months from the time the supply to the particular corporation is made, by the transferee corporations exclusively in the course of their commercial activities.

Existing paragraph (h) requires that the shares of the particular corporation are transferred on the distribution referred to in paragraph (f) of the definition.

Paragraph (h) is amended to add the requirement that the transfer of shares of the particular corporation, upon the distribution referred to in paragraph (f), must be to the "transferee corporations" (as referred to in paragraph (f)) in respect of the distribution.

"specified partnership"

The new definition "specified partnership" means a partnership each member of which is a corporation or a partnership. Specified partnership is used in the definitions "qualifying group" and "qualifying member" in this subsection, as well as in subsections 156(1.1) and (1.2).

Subclauses 6(8) to (13)
Closely related persons
ETA
156(1.1)

Existing subsection 156(1.1) contains rules for determining whether two Canadian partnerships, or a Canadian partnership and a corporation, are closely related for the purposes of section 156.

Subsection 156(1.1) is amended to replace all references to "Canadian partnership" with "specified partnership". The amendments are consequential to the repeal of the definition "Canadian partnership" and the addition of new definition "specified partnership". The amendments to this subsection, and the related consequential amendments to subsection 156(1.2), have no effect on the application of the rules for determining whether two persons are closely related for the purposes of section 156.

The amendments to subsection 156(1.1) are deemed to have come into force on August 10, 2022.

Subclause 6(14)
Persons closely related to the same person
ETA
156(1.2)

Existing subsection 156(1.2) provides that two persons are closely related to each other for the purposes of section 156 if they are each closely related under subsection 156(1.1) to the same corporation or partnership, or if they would be so related to that partnership if each member of that partnership were resident in Canada.

Subsection 156(1.2) is amended to remove the words "or would be so related if each member of that partnership were resident in Canada". The reference is no longer needed as a result of amendments to subsection 156(1.1) that replace references to "Canadian partnership" with "specified partnership". Subsection 156(1.2) now provides that two persons are closely related to each other for the purposes of section 156 if they are each closely related under subsection 156(1.1) to the same corporation or specified partnership.

The amendments to subsection 156(1.2) are deemed to have come into force on August 10, 2022.

Subclause 6(15)
Non-application
ETA
156(2.1)

Subsection 156(2.1) provides exceptions from the application of an election under section 156. Existing paragraph 156(2.1)(c) applies only to supplies where the recipient is a temporary member (as defined in subsection 156(1)). It provides that, in the case of these supplies, the election applies only to supplies received by the temporary member that are made in the contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act*.

Consequential amendments are made to paragraph 156(2.1)(c) to reflect amendments to paragraph (f) of the definition "temporary member" in subsection 156(1). As a result, paragraph 156(2.1)(c) no longer refers to a supply of property being made in the contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act*. Paragraph 156(2.1)(c) now provides that, where the recipient of a supply is a temporary member, the election does not apply to a supply of property that does not meet the conditions set out in paragraph (f) of the definition "temporary member".

The amendment to paragraph 156(2.1)(c) applies in respect of any supply made on or after August 9, 2022.

Clause 7
Later addition to net tax of employer
ETA
172.1(8.01)

New subsection 172.1(8.01) of the Act imposes certain information requirements on a participating employer of one or more pension plans (as those terms are defined in subsection 123(1) of the Act). These information requirements generally apply when an assessment of the employer's net tax for a reporting period results in the employer having to add to that net tax an amount of tax that it is deemed by section 172.1 to have collected in respect of a supply that the

employer is deemed to have made under that section. If these information requirements are met, subsection 172.1(8.01) may then effectively result in an extension of the limitation period to claim an input tax credit or a rebate under section 261.01 of the Act, or to make an election under section 261.01, in respect of the amount.

More specifically, subsection 172.1(8.01) applies when all the following conditions are met:

- the Minister of National Revenue makes an assessment (which, as defined in subsection 123(1) of the Act, includes a reassessment) of the net tax for a reporting period of a person that was a participating employer of one or more pension plans during the reporting period;

- in making the assessment, the Minister determines that the tax in respect of

    - a supply of all or part of a specified resource (as defined in subsection 172.1(1)) deemed to have been made by the person under any of paragraphs 172.1(5)(a) and (5.1)(a), or

    - a supply of an employer resource (as defined in subsection 172.1(1)) deemed to have been made by the person under any of paragraphs 172.1(6)(a), (6.1)(a), (7)(a) and (7.1)(a),

    is greater than the amount of tax that has been accounted for in respect of the supply prior to the Minister's assessment of the net tax for the reporting period; and

- the person has paid or remitted all amounts owing to the Receiver General in respect of the person's net tax for the reporting period.

Where these conditions are met, the rules is paragraphs 172.1(8.01)(a) and (b) apply.

Paragraph 172.1(8.01)(a) requires that the person provide prescribed information in respect of the supply described above to each pension entity (as defined in subsection 123(1)) that is deemed to have paid tax in respect of the specified resource or part, or in respect of the employer resource, as the case may be, under whichever of paragraphs 172.1(5)(d), (5.1)(d), (6)(d), (6.1)(d), (7)(d) and (7.1)(d) is applicable (referred to in subsection 172.1(8.01) as the "applicable paragraph"). This prescribed information must be provided to each pension entity in prescribed form and in a manner satisfactory to the Minister. Further, this prescribed information is required to be provided to each pension entity before the day that is one year after the later of the following two days:

- the day on which the Minister sends the notice of the assessment to the person; and

- the first day on which all amounts owing to the Receiver General in respect of the person's net tax for the reporting period of the person, if any, have been paid or remitted to the Receiver General.

Paragraph 172.1(8.01)(b) applies to a pension entity of a pension plan where the following conditions are met:

- a participating employer of the pension plan — that is deemed to have made a supply of all or part of a specified resource or of an employer resource — is required by paragraph 172.1(8.01)(a) to provide prescribed information to the pension entity and in fact provides that information to the pension entity; and

- the information is received by the pension entity on a particular day that is after the end of the last claim period (as defined in subsection 259(1) of the Act) of the pension entity that ends within two years after the day on which the supply is deemed to have been made.

Where the above conditions are met, subparagraphs 172.1(8.01)(b)(i) and (ii) apply.

Subparagraph 172.1(8.01(b)(i) provides that the pension entity is deemed, for the purposes referred to in the applicable paragraph (i.e., whichever of paragraphs 172.1(5)(d), (5.1)(d), (6)(d), (6.1)(d), (7)(d) or (7.1)(d) that is applicable in respect of the supply), to have paid tax on the particular day (i.e., the day the information is received by the pension entity) equal to the amount determined by multiplying

- the amount of tax in respect of the specified resource or part or of the employer resource, as the case may be, that the pension entity is deemed to have paid under the applicable paragraph;

by the amount determined by dividing

- the difference between the total tax determined in respect of the supply that the participating employer is deemed to have collected and the amount that had been accounted for in respect of the supply prior to the assessment by the Minister;

by

- the total tax determined in respect of the supply that the participating employer is deemed to have collected.

Subparagraph 172.1(8.01)(b)(ii) provides that, if the applicable paragraph in respect of the supply is any of paragraph 172.1(5)(d), (5.1)(d), (6)(d), or (6.1)(d), the tax that the pension entity is deemed to have paid under subparagraph 172.1(8.01)(b)(i) is deemed to be in respect of the

supply of the specified resource or part, or in respect of the supply of the employer resource, as the case may be, that the pension entity is deemed to have received under the applicable paragraph. This deeming rule in subparagraph 172.1(8.01)(b)(ii) is relevant for the purposes of the operation of amended subsections 232.01(5) and 232.02(4) of the Act. It is also relevant in respect of the ability of the pension entity to claim an input tax credit in respect of that tax.

It should be noted that if following the assessment the total tax determined in respect of the supply that the participating employer is deemed to have collected is subsequently revised (such as if the participating employer appeals the assessment or the Minister issues a new assessment), then the amount of tax that the pension entity would be deemed to have paid under subparagraph 172.1(8.01)(b)(i) would be based on this new determination.

For example, consider the case where a participating employer of a pension plan is a registrant and has a fiscal year that is a calendar year and a pension entity of the pension plan that is a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) and a registrant with a claim period and reporting period that is a calendar year. The participating employer is deemed to have made a supply on December 31, 2021 of a specified resource to the pension entity under paragraph 172.1(5)(a). The participating employer accounted for $100 of tax in respect of the supply, of which $40 was the amount that the pension entity as a selected listed financial institution was deemed to have paid in respect of the specified resource under paragraph 172.1(5)(d) (i.e., the federal component of the $100 total tax). However, on September 1, 2024, the Minister of National Revenue assesses the participating employer for its reporting period ending on December 31, 2021 and determines that the tax in respect of the supply was actually $150, of which $60 was the amount that the pension entity as a selected listed financial institution was deemed to have paid in respect of the specified resource under paragraph 172.1(5)(d) (i.e., the federal component of the $150 total tax). On October 31, 2024, the participating employer pays to the Receiver General all amounts owing in respect of its net tax for its reporting period ending on December 31, 2021. On November 30, 2024, the participating employer provides, in prescribed form and in a manner satisfactory to the Minister, prescribed information in respect of the supply and assessment to the pension entity.

- In this case, the participating employer complied with the requirement in paragraph 172.1(8.01)(a) to notify the pension entity within one year of the later of September 1, 2024 and October 31, 2024. As well, the notification was received by the pension entity after December 31, 2023 (i.e., the last day of the pension entity’s claim period that ends two years after the day, December 31, 2021, that the tax in respect of the supply was deemed to have been paid). Therefore the deeming rule in subparagraph 172.1(8.01)(b)(i) would apply in respect of the supply. As a result, the pension entity would, subject to any subsequent determination, be deemed, for the purposes listed in paragraph 172.1(5)(d), to have paid tax on November 30, 2024 of $20, being the amount determined by multiplying $60 (the amount that the pension entity is deemed by paragraph 172.1(5)(d) to have paid

in respect of the supply, following the assessment) by the quotient obtained by dividing $50 (i.e., the difference between $150 (the tax in respect of the supply) and $100 (the amount that had been accounted for in respect of the supply prior to the assessment) by $150 (the tax in respect of the supply).

- If, however, the employer were to successfully appeal the September 1, 2024 assessment and it were to be determined that its original determination of $100 tax in respect of the supply was correct, then subparagraph 172.1(8.01)(b)(i) would instead now deem the pension entity to have paid tax on November 30, 2024 of $0 rather than $20, with $0 being the amount determined by multiplying $40 (the amount that the pension entity is deemed by paragraph 172.1(5)(d) to have paid in respect of the supply, following the assessment) by the quotient obtained by dividing $0 (i.e., the difference between $100 (the tax in respect of the supply) and $100 (the amount that had been accounted for in respect of the supply prior to the assessment)) by $10 (the tax in respect of the supply).

New subsection 172.1(8.01) applies in respect of any notice of assessment, reassessment or additional assessment sent by the Minister of National Revenue. However, in the case where the notice is sent by the Minister to a person on or before August 9, 2022, in applying paragraph 172.1(8.01)(a) to the person that received the assessment, there are two differences. First, the person is not required to provide the prescribed information referred to in that paragraph to each affected pension entity, but may voluntarily do so. Second, if the person chooses to provide the prescribed information to an affected pension entity, it must do so on a day that is before the day that is one year after the later of the following two days:

- The day on which the Act of Parliament that implements subsection 172.1(8.01) receives royal assent; and

- The first day on which all amounts owing to the Receiver General in respect of the net tax for the reporting period of the person, if any, have been paid or remitted to the Receiver General;

in order for the rules in paragraph 172.1(8.01)(b) to apply to the pension entity in respect of the assessment.

Clause 8
Pension entity — assessment of supplier
ETA
172.11

New section 172.11 contains a rule that may apply in respect of a supply to a pension entity of a pension plan (as those terms are defined in subsection 123(1) of the Act). This rule has the effect

of changing the day on which tax is considered to have become payable by the pension entity in respect of the supply for certain specific purposes.

Specifically, when section 172.11 applies in respect of tax that became payable on a particular day, section 172.11 provides that the amount is deemed to have become payable by the pension entity on the day on which the pension entity pays the amount of tax and not to have become payable on the particular day. This deeming rule applies for the purposes of sections 225.2 (determination of adjustments to net tax of selected listed financial institutions), 232.01 and 232.02 (rules governing tax adjustment notes) and 261.01 (rebate and election rules for pension entities) of the Act and the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

However, the deeming rule in section 172.11 applies in respect of tax in respect of a supply of property or a service that became payable by a pension entity of a pension plan on a particular day only where each of the conditions in paragraphs 172.11(a), (b), (c) and (d) apply in respect of that tax.

Paragraph 172.11(a) requires that the supplier of the property or service did not charge the pension entity that tax before a specific day. This specific day is the last day of the last claim period (as defined in subsection 259(1) of the Act) of the pension entity that ends within two years after the end of the claim period of the pension entity that includes the particular day on which that tax became payable.

Paragraph 172.11(b) requires that the supplier disclose in writing to the pension entity that the Minister of National Revenue has assessed the supplier for that tax.

Paragraph 172.11(c) requires that the pension entity pay that tax after the end of that last claim period (i.e., the claim period that ends within two years after the end of the claim period of the pension entity that includes the particular day on which that tax became payable).

Paragraph 172.11(d) requires that that tax is not included in determining either

- a rebate under subsection 261.01(2) of the Act that is claimed by the pension entity for that last claim period or an earlier claim period of the pension entity, or

- an amount that a qualifying employer (as defined in subsection 261.01(1) of the Act) of the pension plan deducts, in determining its net tax for a reporting period of the employer, pursuant to a joint election made under any of subsections 261.01(5), (6) and (9) of the Act with the pension entity for that last claim period or an earlier claim period of the pension entity.

New section 172.11 applies in respect of tax that is paid by a pension entity in a claim period of the pension entity that ends after August 9, 2022.

Clause 9
Permitted deduction
ETA
217

Existing definition "permitted deduction" in section 217 of the Act describes the amounts that can be deducted by a qualifying taxpayer (as described in subsection 217.1(1) of the Act) in determining an amount of qualifying consideration or of an external charge (as those terms are defined in section 217), or in determining an internal charge under subsection 217.1(4). A permitted deduction of a qualifying taxpayer for a specified year (as defined in section 217) of the qualifying taxpayer means an amount that is included in any of paragraphs (a) through (m) of this definition in respect of the specified year.

The definition "permitted deduction" is amended to add new paragraph (k.2) and to make consequential amendments to paragraph (k) in order to clarify the definition in respect of supplies made to a qualifying taxpayer that are deemed to be supplies of financial services by subsection 150(1) of the Act.

Existing paragraph (k) describes an amount that is consideration for a supply of a specified non-arm's length supply (as defined in section 217). However, paragraph (k) excludes interest referred to in paragraph (g), dividends referred to in paragraph (h) and consideration referred to in paragraph (k.1). Further, only the portion of the consideration that does not represent loading (e.g., only the portion that is clearly and fundamentally financial in nature) is a permitted deduction under paragraph (k).

A consequential amendment is made to paragraph (k) as a result of the addition of new paragraph (k.2). In addition to excluding the amounts referred to in paragraphs (g), (h) and (k.1), paragraph (k) is amended to exclude consideration referred to in new paragraph (k.2).

New paragraph (k. 2) describes an amount that is consideration (other than interest referred to in paragraph (g) or dividends referred to in paragraph (h)) for a supply made to a qualifying taxpayer by another person where all of the following conditions are met:

- The supply is deemed by subsection 150(1) to be a supply of a financial service; and
- The other person is a qualifying taxpayer throughout each specified year of the other person during which the other person makes an outlay, or incurs an expense, outside Canada (including an amount described in subsection 217.1(2) of the Act) for the purpose of making the supply.

The amendments to “permitted deduction” apply to any specified year of a person that ends after November 16, 2005. However, a transitional rule applies for the purposes of applying the amendments to the specified year of a person that includes November 17, 2005. In this case, paragraph (k) of the amended definition “permitted deduction” should be read without reference to the term “loading” (as defined in section 217) for an amount of consideration for a specified non-arm's length supply referred to in that paragraph that becomes due, or is paid without having become due, before November 17, 2005. As a result, if any amount of consideration for a specified non-arm's length supply becomes due, or is paid without having become due, after November 16, 2005, the amended definition “permitted deduction” should continue to be read with reference to the term “loading”.

A further transitional measure applies if

- in assessing under section 296 of the Act the tax payable by a qualifying taxpayer under Division IV of Part IX of the Act for a particular specified year of the qualifying taxpayer, an amount was taken into consideration as an external charge or as qualifying consideration for the particular specified year; and

- as a result of the application of these amendments to the definition “permitted deduction”, the amount or part of the amount is not qualifying consideration for any specified year of the qualifying taxpayer and is not an external charge for any specified year of the qualifying taxpayer for which an election under subsection 217.2(1) is in effect.

This transitional measure allows the qualifying taxpayer to request that the Minister of National Revenue assess, reassess, or make an additional assessment of, the net tax to take into account the effect of these amendments to the definition “permitted deduction”. This request must be made in writing and be made within one year after the day on which these amendments to the definition “permitted deduction” receive royal assent. If a request is made, the Minister must then, with all due dispatch, consider the request and under section 296 assess, reassess or, make an additional assessment of, the tax payable by the qualifying taxpayer under Division IV of Part IX for the particular specified year of the qualifying taxpayer, as well as any interest, penalty or other obligation of the qualifying taxpayer. However, this assessment, reassessment or additional assessment is solely for the purpose of taking into account that the amount or the part of the amount, as the case may be, is not qualifying consideration or an external charge for the particular specified year.

Clause 10
Imported supplies of financial institutions
ETA
217.1

Existing section 217.1 of the Act provides various interpretation rules that apply in respect of section 218.01 and subsection 218.1(1.2) of the Act, which are self-assessment provisions that apply to financial institutions that are qualifying taxpayers (as described in subsection 217.1(1)).

Amendments to section 217.1 amend subsections 217.1(6) and (7) and add new subsections 217.1(9) to (12) in respect of the application of the self-assessment provisions in section 218.01 and subsection 218.1(1.2) to financial institutions that are Lloyd's associations (as defined by subsection 123(1) of the Act).

Subclause 10(1)
Qualifying rule for credits and rebates
ETA
217.1(6)

Existing subsection 217.1(6) applies where

- an amount (referred to in subsection 217.1(6) as a "qualifying expenditure") in respect of qualifying consideration, or of an external charge (as those terms are defined in section 217 of the Act), of a qualifying taxpayer (as described in subsection 217.1(1)) in respect of an outlay made, or expense incurred, outside Canada is greater than zero; and

- tax under section 218.01 or subsection 218.1(1.2) in respect of the qualifying expenditure becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable.

Where subsection 217.1(6) applies in respect of a qualifying expenditure of a qualifying taxpayer, paragraphs 217.1(6)(a), (b) and (c) set out interpretation rules that apply for the purposes of determining an input tax credit or an eligible amount (as defined in subsection 261.01(1) of the Act) of the qualifying taxpayer. Paragraph 217.1(6)(a) provides a deeming rule in respect of the *whole or part of property or of a qualifying service* (as defined in section 217) to which the qualifying expenditure is attributable. Paragraph 217.1(6)(a) provides that this *whole or part of property* is referred to in subsections 217.1(6) and (8) as "attributable property" and that this *whole or part of a qualifying service* is referred to in subsections 217.1(6) and (8) as an "attributable service".

As new subsection 217.1(10) also refers to "attributable property" and "attributable service", paragraph 217.1(6)(a) is amended to provide that the whole or part of property to which the

qualifying expenditure is attributable is referred to throughout section 217.1 as “attributable property” and that the whole or part of a qualifying service to which the qualifying expenditure is attributable is referred to throughout section 217.1 as an “attributable service”.

The amendments to paragraph 217.1(6)(a) are deemed to have come into force on August 10, 2022.

Subclause 10(2)
Qualifying rule for credits and rebates – internal charge
ETA
217.1(7)

Existing subsection 217.1(7) applies where

- tax (referred to in subsection 217.1(7) as “internal tax”) under section 218.01 or subsection 218.1(1.2) in respect of an internal charge (as described in subsection 217.1(4) of the Act) becomes payable by a qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable; and

- the internal charge is determined based in whole or in part on the inclusion of an outlay made, or expense incurred, outside Canada by the qualifying taxpayer.

Where subsection 217.1(7) applies in respect of an outlay made, or expense incurred, outside Canada, paragraphs 217.1(7)(a), (b) and (c) set out interpretation rules that apply for the purposes of determining an input tax credit or an eligible amount of the qualifying taxpayer. Paragraph 217.1(7)(a) provides a deeming rule in respect of the *whole or part of property or of a qualifying service* to which the outlay or expense is attributable. Paragraph 217.1(7)(a) provides that this *whole or part of property* is referred to in subsections 217.1(7) and (8) as “internal property” and that this *whole or part of a qualifying service* is referred to in subsections 217.1(7) and (8) as an “internal service”.

As new subsection 217.1(10) also refers to “internal property” and “internal service”, paragraph 217.1(7)(a) is amended to provide that the whole or part of property to which the outlay or expense is attributable is referred to throughout section 217.1 as “internal property” and that the whole or part of a qualifying service to which the qualifying expenditure is attributable is referred throughout section 217.1 as an “internal service”.

The amendments to paragraph 217.1(7)(a) are deemed to have come into force on August 10, 2022.

Subclause 10(3)
Lloyd's associations
ETA
217.1(9)

New subsection 217.1(9) provides rules that apply in respect of a Lloyd's association for the purposes of Division IV of Part IX of the Act. These rules are contained in paragraphs 217.1(9)(a) to (j).

New paragraph 217.1(9)(a) deems the Lloyd's association to be a qualifying taxpayer throughout a specified year (as defined in section 217 of the Act) of the Lloyd's association where the following three conditions are met:

- the members of the Lloyd's association are liable at any time in the specified year under an insurance policy (as defined in subsection 123(1) of the Act);

- the insurance policy was issued by the Lloyd's association (including an insurance policy that the Lloyd's association is deemed by subsection 149.1(3) of the Act to have issued); and

- the insurance policy insures a risk in respect of property ordinarily situated in Canada or in respect of a person resident in Canada.

As a qualifying taxpayer, the Lloyd's association will be subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2) of the Act.

New paragraph 217.1(9)(b) provides that any activity of a member of the Lloyd's association in respect of an insurance policy that was issued by the Lloyd's association (including an insurance policy that the Lloyd's association is deemed by subsection 149.1(3) to have issued) and that insures a risk in respect of property ordinarily situated in Canada or in respect of a person resident in Canada is deemed to be a Canadian activity of the Lloyd's association. This deeming rule is relevant for the determination of qualifying consideration, an internal charge, or an external charge, for a specified year of the Lloyd's association, including under new paragraphs 217.1(9)(c), (e) and (g).

New paragraph 217.1(9)(c) generally provides that the Lloyd's association is deemed to have an amount of qualifying consideration in respect of an outlay made, or expense incurred, outside Canada by a member of the Lloyd's association in certain circumstances. Specifically, paragraph 217.1(9)(c) applies where the following conditions are met:

- a member of the Lloyd's association makes an outlay, or incurs an expense, outside Canada (including an amount described in subsection 217.1(2));

- the outlay or expense may reasonably be regarded as being applicable to a Canadian activity of the Lloyd's association (as deemed by paragraph 217.1(9)(b) or 217.1(11)(b) or as defined in section 217); and

- a particular amount in respect of the outlay or expense would be qualifying consideration for a particular specified year of the member if the outlay or expense were applicable to a Canadian activity of the member and the member were a qualifying taxpayer throughout the particular specified year.

Where paragraph 217.1(9)(c) applies in respect of an outlay made, or expense incurred, by the member of the Lloyd's association, paragraph 217.1(9)(c) deems the amount determined by the formula A minus B to be qualifying consideration for the specified year of the Lloyd's association in which the particular specified year of the member ends. Element A of the formula is the particular amount in respect of the outlay or expense (i.e., the amount that would generally be qualifying consideration for the particular specified year of the member). Element B is the total of all amounts paid to the member as a reimbursement of the outlay or expense.

New paragraph 217.1(9)(d) generally provides that a member of the Lloyd's association is not required to self-assess tax in respect of an outlay or expense where the Lloyd's association is required to include an amount in respect of the outlay or expense in its determination of tax. Specifically, paragraph 217.1(9)(d) applies where

- a particular amount in respect of an outlay or expense is qualifying consideration for a specified year of the Lloyd's association (including an amount that is deemed to be qualifying consideration for the specified year under paragraph 217.1(9)(c)); and

- another amount in respect of the same outlay or expense is qualifying consideration for a specified year of a member of the Lloyd's association.

In this circumstance, paragraph 217.1(9)(d) provides that the other amount of qualifying consideration is not to be included in determining tax under section 218.01 or subsection 218.1(1.2) for the specified year of the member.

New paragraph 217.1(9)(e) generally provides that the Lloyd's association is deemed to have an external charge in respect of an outlay made, or expense incurred, outside Canada by a member of the Lloyd's association in certain circumstances. Specifically, paragraph 217.1(9)(e) applies where the following conditions are met:

- a member of the Lloyd's association makes an outlay, or incurs an expense, outside Canada (including an amount described in subsection 217.1(2));

- the outlay or expense may reasonably be regarded as being applicable to a Canadian activity of the Lloyd's association (as deemed by paragraph 217.1(9)(b) or 217.1(11)(b) or as defined in section 217); and

- a particular amount in respect of the outlay or expense would be an external charge for a particular specified year of the member if the outlay or expense were applicable to a Canadian activity of the member and the member were a qualifying taxpayer throughout the particular specified year.

Where paragraph 217.1(9)(e) applies in respect of an outlay made, or expense incurred, by the member of the Lloyd's association, paragraph 217.1(9)(e) deems the amount determined by the formula A minus B to be an external charge for the specified year of the Lloyd's association in which the particular specified year of the member ends. Element A of the formula is the particular amount in respect of the outlay or expense (i.e., the amount that would generally be an external charge for the particular specified year of the member). Element B is the total of all amounts paid to the member as a reimbursement of the outlay or expense.

New paragraph 217.1(9)(f), like paragraph 217.1(9)(d), generally provides that a member of the Lloyd's association is not required to self-assess tax in respect of an outlay or expense where the Lloyd's association is required to include an amount in respect of the outlay or expense in its determination of tax. Specifically, paragraph 217.1(9)(f) applies where

- a particular amount in respect of an outlay or expense is an external charge for a specified year of the Lloyd's association (including an amount that is deemed to be an external charge for the specified year under paragraph 217.1(9)(e)); and

- another amount in respect of the same outlay or expense is another external charge for a specified year of a member of the Lloyd's association.

In this circumstance, paragraph 217.1(9)(f) provides that the other external charge is not to be included in determining tax under section 218.01 or subsection 218.1(1.2) for the specified year of the member.

New paragraph 217.1(9)(g) generally provides that the Lloyd's association is deemed to have an internal charge in certain circumstances where a member of the Lloyd's association would have an internal charge that relates to a Canadian activity of the Lloyds association. Specifically, paragraph 217.1(9)(g) applies where the following conditions are met:

- a transaction or dealing between a particular qualifying establishment (as those terms are defined in section 217) in Canada of a member of the Lloyd's association and another qualifying establishment of the member in a country other than Canada occurs;

- the transaction or dealing may reasonably be regarded as being applicable to a Canadian activity of the Lloyd's association (as deemed by paragraph 217.1(9)(b) or 217.(11)(b) or as defined in section 217); and

- a part of an amount in respect of the transaction or dealing would be an internal charge (as described in subsection 217.1(4) of the Act) for a particular specified year of the member if the outlay or expense were applicable to a Canadian activity of the member and the member were a qualifying taxpayer throughout the particular specified year.

Where paragraph 217.1(9)(g) applies in respect of a transaction or dealing, the deeming rules in subparagraphs 217.1(9)(g)(i) and (ii) apply in respect of the transaction or dealing.

Subparagraph 217.1(9)(g)(i) deems the amount determined by the formula A minus B to be an internal charge for the specified year of the Lloyd's association in which the particular specified year of the member ends. Element A of the formula is the part of the amount (i.e., the part of transaction or dealing would be an internal charge for the particular specified year of the member). Element B is the total of all amounts paid to the member as a reimbursement of an outlay made, or expense incurred, outside Canada by the member that is included in the determination of the part of the amount in respect of the transaction or dealing (i.e., the part included in element A).

Subparagraph 217.1(9)(g)(ii) contains a deeming rule that applies for the purposes of subsection 217.1(7) so that the Lloyd's association may be able to use that subsection to potentially claim an input tax credit in respect of tax that the Lloyd's association may pay on an amount determined by subparagraph 217.1(9)(g)(i) to be an internal charge for the specified year of the Lloyd's association in which the particular specified year of the member ends. Subparagraph 217.1(9)(g)(ii) provides that, for each outlay made, or an expense incurred, outside Canada by the member that is included in the determination of the part of the amount (i.e., element A of the formula in subparagraph 217.1(9)(a)(i)) in respect of the transaction or dealing

- the outlay or expense is deemed not to have been made or incurred by the member; an

- the amount determined by the formula A minus B is deemed to be an outlay made, or expense incurred, outside Canada by the Lloyd's association, with element A being the amount of the outlay made, or expense incurred, outside Canada by the member and element B being the total of all amounts paid to the member as a reimbursement of the outlay or expense.

New paragraph 217.1(9)(h) generally provides that a member of the Lloyd's association is not required to self-assess tax in respect of a transaction or dealing where the Lloyd's association is required to include an amount in respect of the transaction or dealing in its determination of tax. Specifically, paragraph 217.1(9)(h) applies where

- a part of an amount in respect of a transaction or dealing is a particular internal charge for a specified year of the Lloyd's association (including an amount that is deemed to be an internal charge for the specified year under subparagraph 217.1(9)(g)(i)); and

- a part of the same amount is another internal charge for a specified year of a member of the Lloyd's association.

In this circumstance, paragraph 217.1(9)(h) provides that the other internal charge is not to be included in determining tax under section 218.01 or subsection 218.1(1.2) for the specified year of the member.

New paragraph 217.1(9)(i) deems the Lloyd's association not to deal at arm's length with any of the persons described in subparagraphs 217.1(9)(i)(i) to (iii). As a result, in determining a permitted deduction for a specified year of the Lloyd's association,

- a supply made to the Lloyd's association by any of the described persons could not be a specified arm's length supply (as defined in section 217) and consideration for such a supply could not be described by paragraph (i) of the definition "permitted deduction" in section 217; and

- consideration for a supply made to the Lloyd's association would not be described by paragraph (e) of the definition "permitted deduction" if the supply were part of a transaction or series of transactions (as described in subsection 217.1(3) of the Act) in which any of the described persons was a participant.

Subparagraph 217.1(9)(i)(i) describes any other Lloyd's association. Subparagraph 217.1(9)(i)(ii) describes the Society of Lloyd's (the Society incorporated by the *Lloyd's Act, 1871* (U.K.), 34 Vict., c. 21). Subparagraph 217.1(9)(i)(iii) describes a person referred to in paragraph 14(2)(a) of the *Lloyd's Act 1982* (U.K.), 1982, c. 14. The persons referred to in paragraph 14(2)(a) of the *Lloyd's Act 1982* are generally referred to as members of the Lloyd's community and include members of the Society of Lloyd's, which would include the Lloyd's association's own members, as well as certain agents, brokers, and other professionals that provide services to the Lloyd's association and that are regulated by the Council of Lloyd's (i.e., the council constituted by section 3 of the *Lloyd's Act 1982*).

New paragraph 217.1(9)(j) deems the members of the Lloyd's association not to deal at arm's length with any of the persons described in any of subparagraphs 217.1(9)(i)(i) to (iii) in respect

of any supply, transaction or series of transactions that may reasonably be regarded as being applicable to an activity of the Lloyd's association. As a result, in determining a permitted deduction for a specified year of a member of the Lloyd's association in respect of a supply made to the member that is, for example, in respect of insurance policies issued by the Lloyd's association,

- if the supply is made by any of the described persons, the supply could not be a specified arm's length supply (as defined in section 217) and consideration for the supply could not be described by paragraph (i) of the definition "permitted deduction"; and

- consideration for the supply could not be described by paragraph (e) of the definition "permitted deduction" if the supply is part of a transaction or series of transactions in which any of the described persons is a participant.

New subsection 217.1(9) applies in respect of any specified year of a person that ends after August 9, 2022.

217.1(10) – Lloyd's – credits and rebates

New subsection 217.1(10) provides rules that generally facilitate the claiming of an input tax credit in respect of tax payable by a Lloyd's association in respect of an amount that is deemed to be qualifying consideration, an internal charge or an external charge as a result of the application of subsection 217.1(9). Specifically, subsection 217.1(10) contains rules in paragraphs 217.1(10)(a) and (b) that apply for the following purposes in respect of an amount of tax under section 218.01 or subsection 218.1(1.2) for a specified year of a Lloyd's association:

- applying subsections 217.1(6) and (7) in respect of the amount of tax; and

- determining an input tax credit under section 169 of the Act in respect of the amount of tax.

Paragraph 217.1(10)(a) applies where the amount of tax is in respect of qualifying consideration that is deemed to be qualifying consideration for the specified year under paragraph 217.1(9)(c) or is in respect of an external charge that is deemed to be an external charge for the specified year under paragraph 217.1(9)(e). In this case, the attributable property or attributable service (as those terms are described in paragraph 217.1(6)(a)) to which the qualifying consideration or external charge relates is deemed to have been acquired by the Lloyd's association.

Paragraph 217.1(10)(b) applies where the amount of tax is in respect of an internal charge that is deemed to be an internal charge for the specified year under paragraph 217.1(9)(g). In this case, the internal property or internal service (as those terms are described in paragraph 217.1(7)(a)) to which the internal charge relates is deemed to have been acquired by the Lloyd's association.

New subsection 217.1(10) applies in respect of any specified year of a person that ends after August 9, 2022.

217.1(11) – Lloyd's – reinsurance

New subsection 217.1(11) provides rules that apply for the purposes of Division IV of Part IX of the Act and concerns the situation where members of a Lloyd's association enter into a type of reinsurance agreement (commonly called "reinsurance to close") with either the members of another Lloyd's association or with another person (generally an insurance corporation). See the description of new subsection 149.1(4) of the Act for more information respecting these agreements.

Subsection 217.1(11) applies in respect of an agreement where:

- the agreement is entered into by the members of a particular Lloyd's association and either the members of another Lloyd's association or another person that is a party to the agreement otherwise than as a member of a Lloyd's association;
- the agreement is described in subsection 149.1(4); and
- the agreement applies in respect of one or more insurance policies (referred to in paragraphs 217.11(11)(b) and (c) as the "Canadian covered policies") that insure a risk in respect of property ordinarily situated in Canada or in respect of a person resident in Canada.

Where subsection 217.1(11) applies in respect of an agreement, the rules in paragraphs 217.1(11)(a), (b) and (c) apply.

Paragraph 217.1(11)(a) provides that the other Lloyd's association or the other person, as the case may be, is deemed to be a qualifying taxpayer throughout every specified year of the other Lloyd's association or of the other person that includes a time at which the agreement is in effect. As a qualifying taxpayer, the other Lloyd's association or the other person, as the case may be, will be subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

Paragraph 217.1(11)(b) applies in the case where the agreement is entered into by the members of another Lloyd's association. Paragraph 217.1(11)(b) deems

- any activity of the other Lloyd's association in respect of a Canadian covered policy; and
- any activity of a member of the other Lloyd's association in respect of a Canadian covered policy

to be Canadian activities of the other Lloyd's association.

The deeming of these activities as Canadian activities is relevant to the determination of an external charge, an internal charge or qualifying consideration of the other Lloyd's association for a specified year of the other Lloyd's association, including under new subsection 217.1(9).

Paragraph 217.1(11)(c) applies in the case where the agreement is entered into by another person that is a party to the agreement otherwise than as a member of a Lloyd's association. Paragraph 217.1(11)(c) deems any activity of the other person in respect of a Canadian covered policy to be a Canadian activity of the other person. The deeming of these activities as Canadian activities is relevant to the determination of an external charge, an internal charge or qualifying consideration of the other person for a specified year of the other person.

Paragraph 217.1(11)(c) also deems the other person not to deal with at arm's length with any of the persons described in subparagraphs 217.1(11)(c)(i) to (iii). As a result, a supply made to the other person by any of the described persons could not be a specified arm's length supply (as defined in section 217) and consideration for such a supply could not be described by paragraph (i) of the definition "permitted deduction" in section 217. In addition, consideration for a supply made to the other person would not be described by paragraph (e) of the definition "permitted deduction" if the supply were part of a transaction or series of transactions in which any of the described persons was a participant.

Subparagraph 217.1(11)(c)(i) describes any Lloyd's association (including the particular Lloyd's association). Subparagraph 217.1(11)(c)(ii) describes the Society of Lloyd's (the Society incorporated by the *Lloyd's Act, 1871* (U.K.), 34 Vict., c. 21). Subparagraph 217.1(11)(c)(iii) describes a person referred to in paragraph 14(2)(a) of the *Lloyd's Act 1982* (U.K.), 1982, c. 14 (see the description of subparagraph 217.1(9)(i)(iii) for more information respecting these persons).

New subsection 217.1(11) applies in respect of any specified year of a person that ends after August 9, 2022.

217.1(12) – Lloyd's – members

New subsection 217.1(12) provides an exception to the general rule contained in subsection 217.1(1) for determining if a person is a qualifying taxpayer throughout a specified year of the person. Subsection 217.1(12) generally provides that a person is not a qualifying taxpayer for a specified year of the person where the sole basis for the person being a qualifying taxpayer is that the person is an insurer only by virtue of being a member of a Lloyd's association. Specifically, subsection 217.1(12) applies to a person that is a member of a Lloyd's association at any time in a specified year of the person and that is a person referred to in subparagraph 149(1)(a)(v) of the Act at any time in the specified year (i.e., the person is either an insurer or the person's principal business is providing insurance under insurance policies (as those terms are defined in subsection 123(1) of the Act)). Subsection 217.1(12) provides that such a person is,

despite subsection 217.1(1), not a qualifying taxpayer throughout the specified year if, throughout the specified year, the person meets all of the following conditions:

- the person is not a person referred to in any of subparagraphs 149(1)(a)(i) to (iv) and (vi) to (xi) of the Act;
- the person is not a financial institution because of paragraph 149(1)(b) or (c) of the Act (i.e., it is not a *de minimis* financial institution); an
- the person does not carry on an insurance business in Canada outside of any Lloyd's association.

New subsection 217.1(12) applies in respect of any specified year of a person that ends after August 9, 2022.

Clause 11
Effect of tax adjustment note
ETA
232.01(5)

Existing subsection 232.01(5) of the Act provides rules that apply where the following circumstances exist:

- a participating employer of a pension plan issues a tax adjustment note to a pension entity of the pension plan (as those terms are defined in subsection 123(1) of the Act) under subsection 232.01(3) of the Act in respect of all or part of a specified resource (as defined in subsection 172.1(1) of the Act);
- a supply of the specified resource or part is deemed under subparagraph 172.1(5)(d)(i) or (5.1)(d)(i) of the Act to have been received by the pension entity; and
- in respect of the deemed supply, the pension entity is deemed to have paid tax under subparagraph 172.1(5)(d)(ii) or (5.1)(d)(ii).

Subsection 232.01(5) is amended in respect of the third circumstance. Specifically subsection 232.01(5) now also applies where the pension entity is deemed to have paid tax under new paragraph 172.1(8.01)(b) of the Act in respect of the deemed supply of the specified resource or part.

As a result, where a participating employer of a pension plan issues a tax adjustment note to a pension entity of the pension plan under subsection 232.01(3) in respect of all or part of a specified resource, a supply of the specified resource or part is deemed under subparagraph 172.1(5)(d)(i) or (5.1)(d)(i) to have been received by the pension entity and the pension entity is

deemed to have paid tax under paragraph 172.1(8.01)(b) in respect of the deemed supply, the following rules now apply:

- Paragraph 232.01(5)(b) requires the pension entity to add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, an amount in respect of all input tax credits claimable by the pension entity in respect of the tax that it is deemed to have paid under paragraph 172.1(8.01)(b) in respect of the deemed supply.

- If any part of the tax that the pension entity is deemed to have paid under paragraph 172.1(8.01)(b) in respect of the deemed supply is included in determination of the pension rebate amount (as defined in subsection 261.01(1) of the Act) for a claim period (as defined in subsection 259(1) of the Act) of the pension entity, paragraphs 232.01(5)(c) and (d) require

    - the pension entity to pay back an amount in respect of a rebate determined under subsection 261.01(2) of the Act for the claim period; and

    - each qualifying employer (as defined in subsection 261.01(1)) of the pension plan to add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, an amount in respect of any amount deducted by the qualifying employer from its net tax for a reporting period as a result of an election made under any of subsections 261.01(5), (6) or (9) for the claim period.

The amendment to subsection 232.01(5) is deemed to have come into force on August 10, 2022.

Clause 12
Effect of tax adjustment note
ETA
232.02(4)

Existing subsection 232.02(4) of the Act provides rules that apply where the following circumstances exist:

- a participating employer of a pension plan issues a tax adjustment note to a pension entity of the pension plan (as those terms are defined in subsection 123(1) of the Act) under subsection 232.02(2) of the Act in respect of employer resources (as defined in subsection 172.1(1) of the Act) that were consumed or used to make an actual supply to the pension entity

- the pension entity is deemed under subparagraph 172.1(6)(d)(i) or (6.1)(d)(i) of the Act to have been received a supply of each of those employer resources; and

- in respect of those deemed supplies, the pension entity is deemed to have paid tax under subparagraph 172.1(6)(d)(ii) or (6.1)(d)(ii).

Subsection 232.02(4) is amended in respect of the third circumstance. Specifically subsection 232.02(4) now also applies where the pension entity is deemed to have paid tax under new paragraph 172.1(8.01)(b) of the Act in respect of those deemed supplies of employer resources.

As a result, where a participating employer of a pension plan issues a tax adjustment note to a pension entity of the pension plan under subsection 232.02(4) in respect of employer resources, a supply of one of those employer resources is deemed under subparagraph 172.1(6)(d)(i) or (6.1)(d)(i) to have been received by the pension entity and the pension entity is deemed to have paid tax under paragraph 172.1(8.01)(b) in respect of the deemed supply, the following rules now apply:

- Paragraph 232.02(4)(b) requires the pension entity to add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, an amount in respect of all input tax credits claimable by the pension entity in respect of the tax that it is deemed to have paid under paragraph 172.1(8.01)(b) in respect of the deemed supply.

- If any part of the tax that the pension entity is deemed to have paid under paragraph 172.1(8.01)(b) in respect of the deemed supply is included in determination of the pension rebate amount (as defined in subsection 261.01(1) of the Act) for a claim period (as defined in subsection 259(1) of the Act) of the pension entity, paragraphs 232.02(4)(c) and (d) require

    - the pension entity to pay back an amount in respect of a rebate determined under subsection 261.01(2) of the Act for the claim period; and

    - each qualifying employer (as defined in subsection 261.01(1)) of the pension plan to add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, an amount in respect of any amount deducted by the qualifying employer from its net tax for a reporting period as a result of an election made under any of subsections 261.01(5), (6) or (9) for the claim period.

The amendment to subsection 232.02(4) is deemed to have come into force on August 10, 2022.

Clause 13
Rebate to pension plans
ETA
261.01

Existing section 261.01 of the Act provides for a GST/HST rebate for a pension entity of a pension plan (as those terms are defined in subsection 123(1) of the Act) and allows a pension entity of a pension plan and qualifying employers (as defined in subsection 261.01(1)) of the pension plan to make a joint election to transfer some or all of the pension entity's rebate entitlement to some or all of the qualifying employers. These qualifying employers would then be able to claim a deduction in respect of the transferred amount in determining their net tax.

Amendments to section 261.01 amend both the definition "pension rebate amount" in subsection 261.01(1) and subsection 261.01(3.1) and add new subsections 261.01(3.2) and (3.3). The amendments permit a pension entity of a pension plan to make a separate rebate claim — and, where such a claim is made, permit the pension entity and the qualifying employers of the pension plan to make a separate joint election — in respect of an amount of tax deemed to have been paid under new subparagraph 172.1(8.01)(b)(i) of the Act or deemed to have become payable under new section 172.11 of the Act.

The amendments to section 261.01 are deemed to have come into force on August 10, 2022.

Subclause 13(1)
Pension rebate amount
ETA
261.01(1)

A "pension rebate amount" of a pension entity of a pension plan for a claim period (as defined in subsection 259(1) of the Act) of the pension entity represents the amount of a rebate for the claim period that either the pension entity, if it is a "qualifying pension entity" (as defined in this subsection), may be entitled to claim under subsection 261.01(2) or in respect of which a deduction from net tax may be claimed by participating employers of the pension plan under any of subsections 261.01(5), (6) or (9).

The pension rebate amount of a pension entity of a pension plan for a claim period of the pension entity is the amount determined by the formula element A multiplied by element B, where element A represents a percentage determined in respect of the pension plan (being 33% in the case of a registered pension plan) and element B represents the total of the "eligible amounts" (as defined in subsection 261.01(1) of the Act) of the pension entity for the claim period that meet certain conditions. Element B is, in turn, the amount determined by the formula element G plus element H, where element G represents certain amounts of tax that became payable by the pension entity during the claim period and element H represents certain amounts of tax that were

deemed to have been paid by the pension entity during the claim period under section 172.1 or 172.2 of the Act.

Subparagraph (i) of element H applies where an application for a rebate under subsection 261.01(2) is validly made (i.e., in accordance with subsection 261.01(3)) by the pension entity for the claim period. In that case, existing subparagraph (i) of element H provides that element H is the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition "eligible amount" in this subsection (i.e., an amount of tax that the pension entity is deemed to have paid during the claim period under section 172.1 or 172.2) and that the pension entity elects to include in the determination of the pension rebate amount of the pension entity for the claim period under subsection 261.01(3.1).

Subparagraph (i) of element H of the definition "pension rebate amount" is amended to reflect that a rebate under subsection 261.01(2) for a claim period of a pension entity may now be claimed in a separate rebate application in accordance with new paragraph 261.01(3.2)(a) of the Act, and not just in a regular application for a rebate that must comply with subsection 261.01(3.1). As a result, where an application for a rebate under subsection 261.01(3) is validly made for a claim period of a pension entity, subparagraph (i) of element H now provides that element H is the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition "eligible amount" and is an amount

- that the pension entity elects to include in the determination of the pension rebate amount of the pension entity for the claim period under subsection 261.01(3.1); or

- in respect of which a portion of the rebate under subsection 261.01(2) for the claim period is claimed in a separate rebate application in accordance with paragraph 261.01(3.2)(a).

Subclause 13(2)
Application for rebate — pension rebate amount election
ETA
261.01(3.1)

Existing subsection 261.01(3.1) of the Act provides an application requirement in respect of a rebate under subsection 261.01(2). Specifically, subsection 261.01(3.1) requires that an application for a rebate under subsection 261.01(2) for a claim period of a pension entity indicate the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition "eligible amount" in subsection 261.01(1) and that the pension entity elects to include in the determination of its pension rebate amount for the claim period. An eligible amount that is described in paragraph (b) of the

definition “eligible amount” in subsection 261.01(1) is an amount of tax that the pension entity is deemed to have paid during the claim period under section 172.1 or 172.2 of the Act.

Subsection 261.01(3.1) is amended to provide that the total amount that a pension entity is required to indicate in an application for a rebate under subsection 261.01(2) for a claim period of the pension entity does not include an eligible amount for the claim period in respect of which a portion of the rebate for the claim period is instead claimed by the pension entity in accordance with new paragraph 261.01(3.2)(a) of the Act. New paragraph 261.01(3.2)(a) permits the pension entity to make a separate rebate claim in respect of an amount of tax deemed to have been paid by the pension entity during the claim period under subparagraph 172.1(8.01)(b)(i) of the Act or in respect of an amount of tax deemed to have become payable by the pension entity during the claim period under section 172.11 of the Act.

Subclause 13(3)
Separate claims for a claim period
ETA
261.01(3.2) and (3.3)

261.01(3.2) – Separate claims for a claim period

New subsection 261.01(3.2) of the Act applies in respect of a claim period of a pension entity of a pension plan only if an amount of tax is either deemed to have been paid by the pension entity under subparagraph 172.1(8.01)(b)(i) of the Act on a day in the claim period or if an amount of tax is deemed to have become payable by the pension entity under section 172.11 of the Act on a day in the claim period and if that amount of tax is an eligible amount of the pension entity for the claim period. Subsection 261.01(3.2) allows the pension entity to make a separate early rebate claim under subsection 261.01(2) of the Act in respect of only that eligible amount instead of waiting until the end of the claim period and including the eligible amount in its calculation of its normal rebate claim under subsection 261.01(2) for the claim period. When the pension entity makes a separate rebate claim for a claim period in respect of the eligible amount, subsection 261.01(3.2) may also permit a separate election in respect of that eligible amount to be made under either subsection 261.01(5) or (6) of the Act by the pension entity and the qualifying employers of the pension plan.

More specifically, when subsection 261.01(3.2) applies in respect of an eligible amount of a pension entity for a claim period of the pension entity (i.e., the eligible amount is an amount of tax that is deemed to have been paid by a pension entity of the pension plan under subparagraph 172.1(8.01)(b)(i), or is deemed to have become payable by the pension entity under section 172.11, on a day in the claim period of the pension entity), the rules in paragraphs 261.01(3.2)(a) and (b) apply in respect of the eligible amount.

Paragraph 261.01(3.2)(a) permits the pension entity to make an application to claim a rebate under subsection 261.01(2) for the claim period in respect of only the portion of the rebate under subsection 261.01(2) for the claim period that is respect of the excess pension rebate amount (as defined in new subsection 261.01(3.3) of the Act) for the claim period in respect of the eligible amount. The application in respect of only this portion would be made in a separate application from the pension entity's application under subsection 261.01(2) for the portion of the rebate under subsection 261.01(2) in respect of the remaining pension amount (as defined in subsection 261.01(3.3)) for the claim period. This right to claim multiple rebates for the claim period applies despite subsection 261.01(4), which would otherwise provide that only a single rebate may be claimed for the claim period.

Where the pension entity makes a separate application for the portion of the rebate under subsection 261.01(2) for the claim period of the pension entity that is in respect of the excess pension rebate amount for the claim period in respect of the eligible amount, the normal time limits contained in subsection 261.01(3) of the Act do not apply to the separate application and instead shorter time limits apply. Specifically, in order to be valid, the separate application must be filed by the pension entity after the beginning of the pension entity's fiscal year that includes the claim period and not later than

- if the pension entity is a registrant, the day on or before which the pension entity is required to file the return under Division V for the claim period, or

- if the pension entity is not a registrant, the last day of the claim period.

Paragraph 261.01(3.2)(a) permits but not does require a separate application to be made for a rebate under subsection 261.01(2) in respect of the excess pension rebate amount for the claim period in respect of the eligible amount. The pension entity may either make a separate application for only the particular portion of the rebate that is in respect of that excess pension rebate amount or include the eligible amount in determining the remaining pension rebate amount for the claim period (i.e., include the amount in the pension entity's "normal" rebate claim for the claim period). When it does the latter, the normal time limits in subsection 261.01(4) would apply in respect of an application for a rebate under subsection 261.01(2) in respect of the remaining pension rebate amount for the claim period.

Paragraph 261.01(3.2)(b) permits the pension entity of the pension plan and the qualifying employers of the pension plan to make a separate election under subsection 261.01(5) or (6) for the claim period that is in respect of the excess pension rebate amount for the claim period in respect of the eligible amount. This election under subsection 261.01(5) or (6) for the claim period in respect of that excess pension rebate amount is made separately from any election under that subsection in respect of the remaining pension rebate amount for the claim period.

However, paragraph 261.01(3.2)(b) applies only if pursuant to paragraph 261.01(3.2)(a) the pension entity makes a separate application for a rebate under subsection 261.01(2) that is in respect of the excess pension rebate amount for the claim period in respect of the eligible amount. As a result, paragraph 261.01(3.2)(b) applies only if the pension entity and one or more of the qualifying employers choose to "share" the relief provided by section 261.01 in respect of that excess pension rebate amount through a mix of a rebate claimed by the pension entity and net tax deductions by one or more qualifying employers. Paragraph 261.01(3.2)(b) would not apply if only the qualifying employers will obtain relief in respect of that excess pension rebate amount under section 261.01. Paragraph 261.01(3.2)(b) also would not apply in respect of an election under subsection 261.01(9) of the Act.

As well, to be valid, the separate election under subsection 261.01(5) or (6) that is permitted by paragraph 261.01(3.2)(b) in respect of that excess pension rebate amount must be filed at the same time as the separate application for a rebate under subsection (2) in respect of that excess pension rebate amount that is filed in accordance with the requirements set out in paragraph 261.01(3)(a). As a result, a separate election under subsection 261.01(5) or (6) that is permitted by paragraph 261.01(3.2)(b) in respect of that excess pension rebate amount must be filed within the time limits set out in paragraph 261.01(3.2)(a) that apply to the separate application for a rebate under subsection 261.01(2) in respect of the excess pension rebate amount.

261.01(3.3) – Definitions

New subsection 261.01(3.3) of the Act adds new definitions "excess pension rebate amount" and "remaining pension rebate amount" that are used in subsections 261.01(3.2) and (3.3).

New definition "excess pension rebate amount" is defined in respect of a particular amount of tax that is either deemed to have been paid under subparagraph 172.1(8.01)(b)(i), or to have become payable under section 172.11, by a pension entity during a claim period of the pension entity. An excess pension rebate amount in respect of the particular amounts means the amount that would be the pension rebate amount of the pension entity for the claim period if the particular amount were the only eligible amount of the pension entity for the claim period.

New definition “remaining pension rebate amount” is defined in respect of a claim period of a pension entity. It is determined by subtracting, from the pension rebate amount of the pension entity for the claim period, the total of certain particular amounts. Each of these particular amounts is an excess pension rebate amount for the claim period, in respect of which a portion of the rebate under subsection 261.01(2) for the claim period is claimed by the pension entity in accordance with paragraph 261.01(3.2)(a) (i.e., as a separate claim).

Clause 14
Reporting Institution
ETA
273.2(2)

Existing section 273.2 of the Act requires a reporting institution to file an information return for a fiscal year of the institution with the Minister of National Revenue

For the purposes of section 273.2, a person, other than a prescribed person or a person of a prescribed class, is a reporting institution throughout a fiscal year of the person if the person meets the conditions described in each of paragraphs 273.2(2)(a), (b) and (c). The condition in paragraph 273.2(2)(c) is that the total of all amounts, each of which is an amount included in calculating the person’s income (or, in the case of an individual, business income) for income tax purposes for the last taxation year of the person that ends in the fiscal year, exceeds $1 million (determined on a prorated basis for short taxation years).

Paragraph 273.2(2)(c) is amended to increase the income threshold for persons to qualify as reporting institutions from $1 million to $2 million.

This amendment applies in respect of fiscal years of a person that end after August 9, 2022.

Clause 15
Large payments
ETA
278

Existing section 278 provides that GST/HST payments or remittances be made to the Receiver General.

Subclause 15(1)
Meaning of electronic payment
ETA
278(0.1)

New subsection 278(0.1) sets out the definition “electronic payment”. Electronic payment means any payment or remittance to the Receiver General that is made through electronic services

offered by a financial institution as described by paragraphs 278(3)(a) to (d) or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of payments and remittances made after 2023.

Subclause 15(2)
Electronic payment
ETA
278(3)

Existing subsection 278(3) provides that GST/HST remittances of $50,000 or more be made to the account of the Receiver General at a financial institution.

Amended subsection 278(3) imposes a requirement to make payments and remittances to the Receiver General through electronic means where the amount of the remittance or payment exceeds $10,000, unless the payor or remitter cannot reasonably remit or pay the amount in that manner.

This amendment applies in respect of payments and remittances made after 2023.

Clause 16
Penalty – electronic payments
ETA
280.12

New section 280.12 provides a penalty of $100 for each failure to make an electronic payment or remittance as required under subsection 278(3).

This amendment applies in respect of payments and remittances made after 2023.

Clause 17
Avoidance planning
ETA
285.03

New section 285.03 of the Act introduces a penalty for section 325 avoidance planning.

New section 285.03 is deemed to have come into force on April 19, 2021.

285.03(1) – Definitions

New subsection 285.03(1) of the Act defines the following terms for the purposes of section 285.03.

"*Gross entitlements*"

Gross entitlements means, at any time, all amounts to which a person (or another person not dealing at arm's length with the person) is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of a planning activity (as newly defined in this subsection). The definition "gross entitlements" is relevant for the purpose of computing a penalty under new subsection 285.03(2) for engaging in section 325 avoidance planning.

"*Planning activity*"

Planning activity has the same meaning as in subsection 285.1(1) and generally includes organizing or creating an arrangement, entity, plan or scheme. It also includes participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan or scheme.

"*Section 325 avoidance planning*"

Section 325 avoidance planning is the planning activity in respect of which the penalty in new subsection 285.03(2) applies. This is planning activity that involves the removal of property of a person with the intention of rendering all or a portion of a current or future tax liability debt of the person uncollectible, while attempting to circumvent the application section 325 and the joint and several, and solidary liability in respect of that tax debt. Such planning means planning activity in respect of a transaction or series of transactions that is, or is part of, a section 325 avoidance transaction and that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, has as one of its purposes:

- the reduction of a transferee's joint and several, or solidary, liability under section 325 for an amount payable or remittable under Part IX of the Act by a transferor;

- the reduction of a transferee's joint and several, or solidary, liability under section 325 for an amount that would be payable or remittable by the transferor if not for a transaction or a series of transaction in which an amount, that is or may be relevant in determining any obligations or entitlements under Part IX of the Act of a person that dealt at arm's length with the transferor or transferee immediately before the transaction or series of transactions, is used directly or indirectly to provide a tax benefit for the transferor or transferee; or

- the reduction of the person or another person's ability to pay any amount payable or remittable, or that may become payable or remittable, under Part IX of the Act by the person or the other person.

"*Section 325 avoidance transaction*"

Section 325 avoidance transaction means a transaction or series of transactions in respect of which the conditions in paragraph 325(5)(a) or (b) are met. A transaction or series of transactions can also be a section 325 avoidance transaction in the situation where, if subsection 325(5) were to apply to the transaction or series, the amount determined under subparagraph 325(5)(c)(ii) would exceed the amount determined under subparagraph 325(5)(c)(i).

"*Tax benefit*"

Tax benefit has the same meaning as in subsection 285.1(1) and means a reduction, avoidance or deferral of tax, net tax or other amount payable under Part IX of the Act or an increase in a refund or rebate under that Part.

"*Transaction*"

Transaction includes an arrangement or event.

285.03(2) – Penalty

New subsection 285.03(2) provides for a penalty for a person who engages in, participates in, assents to or acquiesces in section 325 avoidance planning. The penalty is equal to the lesser of

- 50% of the amount payable or remittable under Part IX of the Act, the joint and several, or solidary, liability for which was sought to be avoided through the planning; and

- the total of $100,000 and the person's gross entitlements at the time at which the notice of assessment of the penalty is sent to the person in respect of the planning.

The penalty applies whether the person knows the planning activity is section 325 avoidance planning or the person would reasonably be expected to know it is section 325 avoidance planning but for circumstances amounting to gross negligence.

285.03(3) – Clerical or secretarial services

Subsection 285.03(3) provides that the penalty in subsection 285.03(2) does not apply to a person solely because the person provided clerical services or secretarial services with respect to the section 325 avoidance planning.

Clause 18
Period for assessment
ETA
298(1)(e)

Existing subsection 298(1) of the Act sets out the limitation periods for assessments and reassessments of amounts under Part IX of the Act. Paragraph 298(1)(e) establishes that if a person is liable to pay a penalty, other than a penalty under section 280, 285, 285.01, 285.02 or 285.1 of the Act, the person may not be assessed in respect of the penalty more than four years from when the person became liable.

The amendment to paragraph 298(1)(e) adds a reference to the new penalty imposed under new section 285.03 of the Act in the list of provisions not subject to the limitation period provided for in this paragraph.

This amendment comes into force on royal assent.

Clause 19
Tax liability re transfers not at arm's length
ETA
325

Existing section 325 of the Act provides rules under which a transferee of property may be liable for unpaid taxes of the transferor when the two parties are not dealing at arm's length.

Section 325 is amended by adding new subsection 325(0.1) and by replacing existing subsection 325(5).

These amendments are deemed to have come into force on April 19, 2021.

Subclause 19(1)
Definitions
ETA
325(0.1)

Consequential on the introduction of the section 325 anti-avoidance rules in new subsection 325(5) and the section 325 avoidance planning penalty in new section 285.03 of the Act, section 325 is amended by adding new subsection 325(0.1), which contains definitions that apply in section 325. The existing definition "property" is moved from subsection 325(5) to new subsection 325(0.1). Subsection 325(0.1) also provides that a "transaction" includes an arrangement or event.

Subclause 19(2)
Anti-avoidance rules
ETA
325(5)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 325(1). The Minister of National Revenue may assess the person for such a liability under subsection 325(2).

Subsection 325(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable or remittable by the transferor under Part IX of the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 325(5) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 325.

New paragraph 325(5)(a) addresses planning that attempts to circumvent the application of section 325 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 325, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable or remittable under Part IX of the Act.

New paragraph 325(5)(b) addresses planning that attempts to circumvent the application of section 325 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under Part

IX of the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 325, regardless of whether the Minister has made an assessment under subsection 325(2) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under Part IX of the Act by the transferor or transferee.

New paragraph 325(5)(c) addresses planning that attempts to effectively avoid section 325 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 325, element A of the formula in paragraph 325(1)(d) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (5)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 325, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (5)(c) deems the amount determined under element A in paragraph 325(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded, provided that other property is not substituted for such consideration).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (5)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 20
Evidence
ETA
335

Existing section 335 provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part IX of the Act.

Subclause 20(1)
Date electronic notice sent
ETA
335(10.1)

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing subsection 335(10.1) provides that a notice or other communication will be, for the purposes of Part IX, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (10.2), subsection (10.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 20(2)
Date electronic notice sent – business account
ETA
335(10.2)

New subsection 335(10.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (10.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Clause 21
Definitions
ETA
Sch. VI, Pt. VII, s. 1(1)

Part VII of Schedule VI to the Act zero-rates international freight and passenger transportation services.

Subsection 1(1) of Part VII defines terms used in Part VII. Subsection 123(1) of the Act, which contains definitions of terms used in Part IX of the Act and in Schedules V to X to the Act, defines the term "property" as not including money. Therefore, money does not constitute tangible personal property for the purposes of Part VII of Schedule VI.

Subsection 1(1) is amended to provide that the term "tangible personal property" includes money for the purposes of Part VII of Schedule VI.

This amendment is deemed to come into force on the day after Announcement Date. It also applies in respect of a supply made on or before Announcement Date unless the supplier charged or collected, on or before Announcement Date, any amount as or on account of tax under Part IX of the Act in respect of the supply.

Air Travellers Security Charge Act

Clause 22
Large payments
ATSCA
20

Existing section 20 of the *Air Travellers Security Charge Act* (the Act) provides that every person required under the Act to pay $50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution.

Section 20 is replaced by subsections 20(1) and 20(2).

New subsection 20(1) sets out the definition “electronic payment”. Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 20(2)(a) to (d) or by any electronic means specified by the Minister.

New subsection 20(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds $10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2023.

Clause 23
Penalty – electronic payments
ATSCA
54

New section 54 provides a penalty of $100 for each failure to make an electronic payment as required under subsection 20(2).

This amendment applies in respect of payments made after 2023.

Clause 24
Evidence
ATSCA
83

Existing section 83 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

Subclause 24(1)
Date electronic notice sent
ATSCA
83(9.1)

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing section 83(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person’s most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person’s secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (9.2), subsection (9.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 24(2)
Date electronic notice sent – business account
ATSCA
83(9.2)

New subsection 83(9.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (9.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Excise Act, 2001

Clause 25
Information on container
EA, 2001
87

Existing section 87 of the *Excise Act, 2001* (the Act) provides that every alcohol licensee who packages alcohol shall place information prescribed by regulations on both the container containing the alcohol and on any packaging encasing the container.

Section 87 is amended to add new paragraph (a.1).

New paragraph (a.1) provides that, in the case where duty is not imposed on wine because of paragraph 135(2)(a) (i.e., wine that is produced in Canada from honey or apples and composed wholly of agricultural or plant product grown in Canada), the wine licensee shall cause the required prescribed information to be displayed on the container containing the alcohol and on any packaging encasing the container before the wine is: removed from the licensee's premises, consumed, or made available for sale on the premises.

This amendment is deemed to have come into force on June 30, 2022.

Clause 26
Prohibition — possession
EA, 2001
88(2)(i)

Existing subsection 88(1) of the Act prohibits the possession of non-duty-paid packaged alcohol and existing subsection 88(2) of the Act lists exceptions to the prohibition on possession.

Paragraph 88(2)(i) is amended to provide that wine referred to in paragraph 135(2)(a) (i.e., wine that is produced in Canada from honey or apples and composed wholly of agricultural or plant product grown in Canada) may be possessed by any person.

This amendment is deemed to have come into force on June 30, 2022.

Clause 27
Non-application
EA, 2001
158.01

Existing section 158.01 of the Act specifies those cannabis products to which Part 4.1 of the Act does not apply. Paragraphs 158.01(a) to (c) specify that Part 4.1 does not apply to:

- cannabis products that are produced in Canada by an individual for their personal use and in accordance with the *Cannabis Act*, but only to the extent that those cannabis products are not used in a prohibited manner under that Act;

- cannabis products that are produced in Canada by an individual for their own medical purposes and in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act*, but only to the extent that those cannabis products are not used in a manner prohibited under one of those Acts; or

- cannabis products that are produced in Canada by a designated person (being an individual who is authorized under the *Controlled Drugs and Substances Act* or the *Cannabis Act* to produce cannabis for the medical purposes of another individual) for the medical purposes of another individual and in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act*, but only to the extent that those cannabis products are not used in a manner prohibited under one of those Acts.

New paragraph 158.01(d) is added to specify that Part 4.1 also does not apply to cannabis products that are in the possession of a holder of a licence referred to in paragraph 8(1)(e) or (f) of the *Cannabis Regulations* (i.e., a licence issued under subsection 62(1) of the *Cannabis Act* that is either a licence for research or a cannabis drug licence) but only to the extent that those

cannabis products are used by the holder of the licence in activities that are not prohibited for those cannabis products under the conditions of the license or the *Cannabis Act*.

This amendment comes into force on royal assent.

Clause 28
Packaging and stamping of cannabis
EA, 2001
158.13

Existing section 158.13 of the Act prohibits a cannabis licensee from entering the cannabis products the licensee produces into the duty-paid market, unless the products have been packaged and properly stamped by the licensee (including being stamped to indicate that the additional cannabis duty has been paid, if applicable) and have information prescribed by regulations printed on the packages, if applicable. Also, the cannabis products are required to be stamped at the time of packaging.

Section 158.13 is amended to modify the requirements that cannabis products are packaged and stamped by the same cannabis licensee that is entering the cannabis products into the duty-paid market. Instead, if prescribed conditions are met a cannabis licensee may also enter cannabis products into the duty-paid market that another cannabis licensee has packaged or stamped.

This amendment comes into force on royal assent.

Clause 29
Duty payable
EA, 2001
158.19(3) and (4)

Existing section 158.19 of the Act imposes duty on cannabis products produced in Canada. Existing subsection 158.19(1) imposes a flat-rate duty on cannabis products produced in Canada at the time they are packaged. The amount of the flat-rate duty is determined under section 1 of Schedule 7 to the Act. Existing subsection 158.19(2) imposes an ad valorem duty (i.e., a duty based on a percentage of the "dutiable amount" as defined in section 2 of the Act) on cannabis products produced in Canada at the time they are delivered to a purchaser. The amount of the ad valorem duty is determined under section 2 of Schedule 7 to the Act.

Existing subsection 158.19(3) provides that only the greater of the flat-rate and ad valorem duties imposed under subsections 158.19(1) and (2) is payable by the cannabis licensee that packaged the cannabis product at the time of its delivery to a purchaser. The lesser of those two duties is relieved. Subsection 158.13(3) is amended to specify that if another person meets prescribed

conditions in respect of the cannabis product, then the greater of those two duties is instead payable by the other person and not by the cannabis licensee that packaged the cannabis product.

Existing subsection 158.19(4) provides that if the flat-rate and ad valorem duties imposed under subsections 158.19(1) and (2) are equal, then only the flat-rate duty is payable by the cannabis licensee that packaged the cannabis product at the time of its delivery to a purchaser, and the cannabis products are relieved of the ad valorem duty. Subsection 158.13(4) is amended to specify that if another person meets prescribed conditions in respect of the cannabis product, then the flat-rate duty is instead payable by the other person and not by the cannabis licensee that packaged the cannabis product.

These amendments come into force on royal assent.

Clause 30
Duty payable
EA, 2001
158.2(2)

In addition to the duties imposed under existing section 158.19 of the Act, existing subsection 158.2(1) of the Act imposes a duty in respect of a specified province on cannabis products produced in Canada in circumstances prescribed by regulations in the amount determined in a prescribed manner. This additional cannabis duty is payable by the cannabis licensee that packaged the cannabis products at the time they are delivered to a purchaser under existing subsection 158.2(2). The additional cannabis duty applies in respect of the provinces and territories that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

Subsection 158.2(2) is amended to specify that if another person meets prescribed conditions in respect of the cannabis product, then the additional cannabis duty is instead payable by the other person and not by the cannabis licensee that packaged the cannabis product.

This amendment comes into force on royal assent.

Clause 31
Reporting period – general
EA, 2001
159.1(1)

Existing section 159.1 of the Act determines the reporting period of a person for filing a return under the Act. Subsection 159.1(1) provides that the reporting period of a person is a fiscal month, unless the person has a semi-annual reporting period pursuant to subsection 159.1(2).

Subsection 159.1(1) is amended so that it also does not apply if the person is a cannabis licensee that has a quarterly reporting period pursuant to new section 159.2 (see commentary to that new section).

This amendment is deemed to have come into force on April 1, 2022.

Clause 32
Reporting period – quarterly
EA, 2001
159.2

New section 159.2 of the Act provides that certain qualifying cannabis licensees may have quarterly reporting periods.

New subsection 159.2(1) defines the terms used in new section 159.2.

"calendar quarter"

The new definition "calendar quarter" means a period of three months beginning on the first day of January, April, July or October.

"threshold amount"

The new definition "threshold amount" of a cannabis licensee for a calendar quarter means the amount that is the total of all duties payable under Part 4.1 of the Act by the cannabis licensee, and any person associated with the cannabis licensee, in the immediately preceding four calendar quarters.

New subsection 159.2(2) provides that, despite subsection 159.1(1) of the Act, the Minister of National Revenue may authorize a cannabis licensee to have reporting periods that are calendar quarters, beginning on the first day of a particular calendar quarter, if the threshold amount of the cannabis licensee for the particular calendar quarter does not exceed $1,000,000.

New subsection 159.2(3) provides that an application made by a cannabis licensee under subsection 159.2(2) is to be made in prescribed form containing prescribed information and is to be filed with the Minister in prescribed manner within the first month of the first calendar quarter for which the authorization is to take effect or before any later day that the Minister may allow.

New subsection 159.2(4) provides that an authorization under subsection 159.2(2) is deemed to be revoked at the beginning of a calendar quarter if the threshold amount of the cannabis licensee for the calendar quarter exceeds $1,000,000.

New subsection 159.2(5) provides that the Minister may revoke an authorization under subsection 159.2(2) in respect of a cannabis licensee if the cannabis licensee requests in writing that the Minister do so, if the cannabis licensee fails to comply with the Act or if the Minister considers that the authorization is no longer required.

New subsection 159.2(6) provides that upon the revocation of an authorization under subsection 159.2(5), the Minister shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective.

New subsection 159.2(7) provides that, if a revocation under subsection 159.2(4) or (5) becomes effective before the last day of a calendar quarter, the period beginning on the first day of the calendar quarter and ending immediately before the first day of the fiscal month for which the revocation becomes effective is deemed to be a reporting period of the cannabis licensee.

These amendments are deemed to have come into force on April 1, 2022.

Clause 33
Large payments
EA, 2001
163

Existing section 163 provides that every person required the Act to pay $50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution. Existing section 163 is replaced by subsections 163(1) and 163(2).

New subsection 163(1) sets out the definition “electronic payment”. Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 163(2)(a) to (e) or by any electronic means specified by the Minister.

New subsection 163(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds $10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2023.

Clause 34
Contravention of section 158.02, 158.1, 158.11 or 158.12
EA, 2001
234.1

Existing section 234.1 of the Act provides that any person that contravenes section 158.02 of the Act (production of cannabis products without a licence), that receives for sale cannabis products

in contravention of section 158.1 of the Act (prohibition regarding cannabis products for sale, etc.) or that sells or offers to sell cannabis products in contravention of section 158.11 (selling unstamped cannabis) or 158.12 (sale or distribution by a licensee) of the Act is liable to a penalty.

Section 234.1 is amended so that a person that commits any contravention of section 158.02, 158.1, 158.11 or 158.12 of the Act is liable to a penalty.

This amendment comes into force on royal assent.

Clause 35
Penalty – electronic payments
EA, 2001
251.11

New section 251.11 provides a penalty of $100 for each failure to make an electronic payment as required under subsection 163(2).

This amendment applies in respect of payments made after 2023.

Clause 36
Liability re transfers not at arm's length
EA, 2001
297

Existing section 297 of the Act provides rules under which a transferee of property may be liable for unpaid duties of the transferor when the two parties are not dealing at arm's length.

Section 297 is amended by adding new subsection 297(0.1) and by replacing existing subsection 297(6).

These amendments are deemed to have come into force on April 19, 2021.

Subclause 36(1)
Definitions
EA, 2001
297(0.1)

Consequential on the introduction of the section 297 anti-avoidance rules in new subsection 297(6), section 297 is amended by adding new subsection 297(0.1), which contains definitions that apply in section 297. The existing definitions "common-law partner" and "common-law partnership" are moved from subsection 297(6) to new subsection 297(0.1). Subsection 297(0.1) also provides that a "transaction" includes an arrangement or event.

Subclause 36(2)
Anti-avoidance rules
EA, 2001
297(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 297(1). The Minister of National Revenue may assess the person for such a liability under subsection 297(3).

Subsection 297(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 297(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 297.

New paragraph 297(6)(a) addresses planning that attempts to circumvent the application of section 297 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 297, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under the Act.

New paragraph 297(6)(b) addresses planning that attempts to circumvent the application of section 297 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section

297, regardless of whether the Minister has made an assessment under subsection 297(3) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under the Act by the transferor or transferee.

New paragraph 297(6)(c) addresses planning that attempts to effectively avoid section 297 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 297, element A of the formula in paragraph 297(1)(d) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 297, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (6)(c) deems the amount determined under element A in paragraph 297(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded, provided that other property is not substituted for such consideration).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (6)(c)(ii) is intended

to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 37
Evidence
EA, 2001
301

Existing section 301 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

Subclause 37(1)
Date electronic notice sent
EA, 2001
301(9.1)

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing section 301(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (9.2), subsection (9.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 37(2)
Date electronic notice sent – business account
EA, 2001
301(9.2)

New subsection 301(9.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (9.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the

secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Clause 38
Regulations – Governor in Council
EA, 2001
304(1)(n.1)

Existing section 304 of the Act provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act.

New paragraph 304(1)(n.1) is added to provide authority to the Governor in Council to make regulations respecting the packaging or stamping, and entry into the duty-paid market, by a cannabis licensee of cannabis products that are owned or produced by another cannabis licensee, subject to an authorization of the Minister and any conditions that the Minister considers appropriate, and prescribing joint and several, or solidary, liability or penalties in respect of those cannabis products.

This amendment comes into force on royal assent.

Greenhouse Gas Pollution Pricing Act

Clause 39
Large payments
GGPPA
86

Existing section 86 provides that every person required under Part 1 of the *Greenhouse Gas Pollution Pricing Act* (the Act) to pay $50,000 or more in a single payment to the Receiver General is required to pay the amount at a financial institution. Existing section 86 is replaced by subsections 86(1) and 86(2).

New subsection 86(1) sets out the definition “electronic payment”. Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 86(2)(a) to (d) or by any electronic means specified by the Minister.

New subsection 86(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds $10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2023.

Clause 40
Penalty – electronic payments
GGPPA
123.1

New section 123.1 provides a penalty of $100 for each failure to make an electronic payment as required under subsection 86(2).

This amendment applies in respect of payments made after 2023.

Clause 41
Charge liability – transfers not at arm's length
GGPPA
161

Existing section 161 of the Act provides rules under which a transferee of property may be liable for unpaid charges of the transferor when the two parties are not dealing at arm's length.

Section 161 is amended by adding new subsection 161(0.1) and by replacing existing subsection 161(6).

These amendments are deemed to have come into force on April 19, 2021.

Subclause 41(1)
Meaning of transaction
GGPPA
161(0.1)

Consequential on the introduction of the section 161 anti-avoidance rules in new subsection 161(6), section 161 is amended by adding new subsection 161(0.1), which provides that a "transaction" includes an arrangement or event.

Subclause 41(2)
Anti-avoidance rules
GGPPA
161(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length charge debtor is determined under subsection 161(1). The Minister of National Revenue may assess the person for such a liability under subsection 161(3).

Subsection 161(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing charge liability or a charge liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under Part 1 of the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 161(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 161.

New paragraph 161(6)(a) addresses planning that attempts to circumvent the application of section 161 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 161, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under Part 1 of the Act.

New paragraph 161(6)(b) addresses planning that attempts to circumvent the application of section 161 by avoiding the requirement that the transferor have an existing charge debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under Part 1 (including, for greater certainty, an amount that the transferor is liable to pay under

section 161, regardless of whether the Minister has made an assessment under subsection 161(3) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of a future amount payable under Part 1 of the Act by the transferor or transferee.

New paragraph 161(6)(c) addresses planning that attempts to effectively avoid section 161 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a charge debt of the transferor uncollectible.

In applying section 161, element A of the formula in paragraph 161(1)(d) is intended to limit the joint and several, or solidary liability in respect of any charge liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's charge liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 161, including

- at the time that the consideration was given, and

- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (6)(c) deems the amount determined under element A in paragraph 161(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and

- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded, provided that other property is not substituted for such consideration).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 42
Evidence
GGPPA
164

Existing section 164 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part 1 of the Act.

Subclause 42(1)
Date electronic notice sent
GGPPA
164(12)

Existing subsection 164(12) provides that a notice or other communication will be, for the purposes of this Part, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (12.1), subsection (12) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 42(2)
GGPPA
164(12.1)

New subsection 164(12.1) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (12.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted

in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Underused Housing Tax Act

Clause 43
Definition "specified Canadian partnership"
UHTA
2

Existing section 2 of the *Underused Housing Tax Act* (the "Act") contains definitions that are used in the Act.

The definition "specified Canadian partnership" in section 2 is used in subsection 6(7) of the Act. Paragraphs (a) to (n) of subsection 6(7) set out a number of exclusions where tax under subsection 6(3) of the Act is not payable by a person in respect of a residential property (as defined in section 2) for a calendar year.

Under the exclusion set out in paragraph 6(7)(a), tax is not payable by a person in respect of a residential property for a calendar year if the person is an owner (as defined in section 2) of the residential property solely in their capacity as a partner of a partnership that is a specified Canadian partnership in respect of the calendar year.

Under the existing definition "specified Canadian partnership", a partnership is a specified Canadian partnership in respect of a calendar year if each member of the partnership is, on December 31 of the calendar year, an excluded owner or a specified Canadian corporation (as those terms are defined in section 2).

Under the existing definition "excluded owner" in section 2, an individual who is a citizen or permanent resident (as those terms are defined in section 2) is an excluded owner, except to the extent the individual is an owner of residential property in their capacity as a partner of a partnership. As a result, such a partner would disqualify a partnership of which it is a member from being a specified Canadian partnership.

To ensure that a partner who is a citizen or permanent resident does not preclude a partnership from being a specified Canadian partnership, paragraph (a) of the definition "specified Canadian partnership" is amended to add to the type of eligible members of a specified Canadian partnership, a member of the partnership that would be, on December 31 of the calendar year, an

excluded owner if paragraph (b) of the definition “excluded owner” were read without reference to the words “or as a partner of a partnership”.

This amendment is deemed to have come into force on January 1, 2022.

Clause 44
Tax not payable
UHTA
6(7)

Paragraphs (a) to (n) of subsection 6(7) of the Act set out a number of exclusions where tax under subsection 6(3) of the Act is not payable by a person in respect of a residential property (as defined in section 2 of the Act) for a calendar year.

Paragraph 6(7)(l) is amended to correct the time at which construction of a residential property must be substantially completed in order to qualify under that paragraph for an exclusion from the payment of tax. Specifically, the reference to the residential property being substantially completed “after March” of a calendar year is replaced by a reference to the residential property being substantially completed “in January, February or March” of a calendar year.

This amendment is deemed to have come into force on January 1, 2022.

Clause 45
Failure to file a return
UHTA
47(1)

Existing subsection 47(1) of the Act imposes a penalty on any person that fails to file a return for a residential property for a calendar year as and when required under section 7 of the Act.

As a housekeeping amendment to provide for proper cross-referencing of provisions within the Act, subsection 47(1) is amended to update the reference to section 7 in that subsection to a reference to Part 4 of the Act.

This amendment is deemed to have come into force on January 1, 2022.

Income Tax Act

Clause 46
Exception – underused housing tax
ITA
116(8)

Under existing section 116 of the *Income Tax Act* (the "Act") if a non-resident disposes of, or plans to dispose of, taxable Canadian property, the non-resident can obtain a special certificate from the Minister of National Revenue. The certificate, which is also provided to the purchaser, confirms that the non-resident vendor has made arrangements relating to the payment of tax resulting from the disposition. Without such a certificate, the purchaser may be required to remit a percentage of the purchase price to the Receiver General on account of the non-resident's tax liability.

New subsection 116(8) of the Act contains rules that apply to taxable Canadian property that is residential property, as defined in section 2 of the *Underused Housing Tax Act*. Subsection (8) provides that if, in the absence of subsection (8), the Minister of National Revenue would be required to issue a certificate under subsection 116(2), (4) or (5.2) of the Act in respect of a disposition, or a proposed disposition, of property that is residential property, as defined in section 2 of the *Underused Housing Tax Act*, the Minister of National Revenue may decline to issue the certificate if any of the circumstances described in paragraphs (a) to (c) apply.

Paragraph (a) applies if the Minister of National Revenue is not satisfied that all returns that the non-resident person is required to file under section 7 of the *Underused Housing Tax Act* in respect of the property have been filed.

Paragraph (b) applies if the Minister of National Revenue is not satisfied that all taxes or other amounts payable under the *Underused Housing Tax Act* by the non-resident person have been paid.

Paragraph (c) applies if the conditions described in subparagraphs (c)(i) and (ii) are met. Subparagraph (i) applies if the Minister of National Revenue has reasonable grounds to believe that, for the calendar year immediately preceding the calendar year in which the property is or is expected to be disposed of, the non-resident person will be required to file a return under section 7 of the *Underused Housing Tax Act* in respect of the property or will become liable to pay an amount of tax under subsection 6(3) of the *Underused Housing Tax Act* in respect of the property. Subparagraph (ii) applies if the return described in subparagraph (i) has not been filed or the amount of tax described in subparagraph (i) has not been paid.

This amendment comes into force on royal assent.

Budget Implementation Act, 2022, No. 1

Clause 47
Budget Implementation Act, 2022, No. 1
Budget Implementation Act, 2022, No. 1
128

Section 128 of the *Budget Implementation Act, 2022, No. 1* sets out the transitional rules for the provisions of Division 1 of Part 3 of that Act, which relate to the taxation of vaping products. Under those existing transitional rules, starting January 1, 2023, duties apply under section 158.6 of the *Excise Act, 2001* in respect of vaping products that are taken for use by the person that is responsible for the products, and under section 158.61 of that Act in respect of vaping products that cannot be accounted for by the person that is responsible for the products. Generally, the person that is responsible for vaping products is the manufacturer or importer of the vaping products. Under the current transitional rules, a manufacturer or importer of vaping products could incorrectly be held liable for these duties under section 158.6 or 158.61 for unstamped vaping products that were legally sold during the transitional period between October 1, 2022 and January 1, 2023.

Those transitional rules in section 128 are therefore amended to provide that the duties for vaping products that are taken for use or that cannot be accounted for do not apply at all (even after the end of the transitional period) in respect of unstamped vaping products manufactured in Canada that are packaged before October 1, 2022, or in respect of unstamped vaping products that are imported before October 1, 2022.

Storage of Goods Regulations

Clause 48
Storage of Goods
Storage of Goods Regulations
3

The *Storage of Goods Regulations* outline the conditions and time limits concerning the storage of goods in a customs office. The amendment to these Regulations is consequential to the addition of new Part 4.2 of the *Excise Act, 2001* relating to vaping products.

Existing subsection 3(4) of these Regulations provides the time limit of 14 days on certain goods (including tobacco products) before the goods are forfeited if they are not removed from a customs office. Subsection 3(4) is amended so that it also applies in respect of vaping products.

This amendment is deemed to have come into force on October 1, 2022.

Joint Venture (GST/HST) Regulations

Clause 50
Joint Ventures
Joint Venture (GST/HST) Regulations
3

Subsection 3(1) of the *Joint Venture (GST/ HST) Regulations* provides that the activities that are prescribed for the purposes of subsection 273(1) of the Act are the activities that are described in paragraphs 3(1)(a) to (p). Subsection 3(1) is amended to add new paragraph (q), which describes a new activity – being the operation of a pipeline, rail terminal or truck terminal used for the transportation of oil, natural gas or related or ancillary products – that is added to the list of activities that are prescribed for the purposes of subsection 273(1).

This amendment is deemed to have come into force on January 1, 1991.

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations

Clause 52
Permanent establishment in a province
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
3

Section 3 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* (the "Regulations") contains rules governing permanent establishments of financial institutions for the purposes of the Regulations.

Section 3 is amended by modifying paragraphs 3(a), (b), (c) and (e) and adding new paragraph 3(g).

Existing paragraph 3(a) contains rules that deem a bank or credit union (as those terms are defined in subsection 123(1) of the Act) to have a permanent establishment in a province in certain circumstances. In particular, paragraph 3(a) deems a bank or credit union to have a permanent establishment in a province in a taxation year of the bank or credit union if, at any time in the taxation year, a loan made by the bank or credit union is outstanding and is either secured by lands in the province or, if not secured by land, owing by persons resident in the province.

Paragraph 3(a) is amended to replace all references to land with real property (as defined in subsection 123(1) of the Act). As a result, a financial institution that is a bank or credit union will be deemed to have a permanent establishment in a province in a taxation year of the financial institution if, at any time in the taxation year, a loan made by the financial institution is

outstanding and is either secured by real property in the province or, if not secured by real property, owing by persons resident in the province.

Existing paragraph 3(b) contains rules that deem an insurer (as defined in subsection 123(1) of the Act) to have a permanent establishment in a province in certain circumstances. Paragraph 3(b) is amended to clarify that it does not apply to a financial institution that is a bank, a credit union or an investment plan (as defined in subsection 1(1) of the Regulations), even if that financial institution is also an insurer.

Existing paragraph 3(c) contains rules that deem a trust and loan corporation, a trust corporation or a loan corporation to have a permanent establishment in a province in certain circumstances. In particular, paragraph 3(c) deems a trust and loan corporation, a trust corporation or a loan corporation to have a permanent establishment in a province in a taxation year of the corporation if, at any time in the taxation year, a loan made by the corporation is outstanding and is either secured by lands in the province or, if not secured by land, owing by persons resident in the province

Paragraph 3(c) is amended in two ways. Firstly, paragraph 3(c) is amended to replace all references to land with real property. As a result, a financial institution that is a trust and loan corporation, a trust corporation or a loan corporation will be deemed to have a permanent establishment in a province in a taxation year of the financial institution if, at any time in the taxation year, a loan made by the financial institution is outstanding and is either secured by real property in the province or, if not secured by real property, owing by persons resident in the province. Secondly, paragraph 3(c) is amended to clarify that it does not apply to a financial institution that is a bank, a credit union, an insurer or an investment plan, even if that financial institution is also a trust and loan corporation, a trust corporation or a loan corporation.

The amendments to paragraphs 3(a), (b) and (c) apply to any reporting period of a financial institution beginning after August 9, 2022.

Existing paragraph 3(e) contains rules governing permanent establishments of distributed investment plans, other than segregated funds of an insurer.

Paragraph 3(e) is amended to provide that it no longer applies to a distributed investment plan (as defined in subsection 1(1) of the Regulations) that is a master pension entity (as defined in subsection 123(1) of the Act).

New paragraph 3(g) contains rules governing permanent establishments of a master pension entity (as defined in subsection 123(1) of the Act). Paragraph 3(g) deems a master pension entity to have a permanent establishment in a province throughout a taxation year of the master pension entity if, at any time in the taxation year,

- a pension entity (as defined in subsection 123(1) of the Act) or a private investment plan holds one or more units of the master pension entity and a plan member (as those terms are defined in subsection 1(1) of the Regulations) of the pension entity or private investment plan is resident in the province,

- another master pension entity holds one or more units of the master pension entity and the other master pension entity has a permanent establishment in the province by operation of paragraph 3(g), or

- a person, other than a pension entity, a master pension entity or a private investment plan, holds one or more units of the master pension entity and that person is resident in the province.

The amendment to paragraph 3(e) and new paragraph 3(g) apply to any fiscal year of a financial institution beginning after August 9, 2022.

Clause 53
Qualifying investment plans
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
7

Section 7 of the Regulations contains rules to determine if an investment plan (as defined in subsection 1(1) of the Regulations) is a qualifying small investment plan for a fiscal year of the investment plan. Under section 10 of the Regulations, an investment plan that is a qualifying small investment plan for a particular fiscal year of the investment plan is generally not a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) for its following fiscal year unless it elects to be one under section 14 of the Regulations.

Section 7 is amended to provide rules to determine if an investment plan is a qualifying private investment plan for a fiscal year of the investment plan. Currently an investment plan that would generally be a qualifying private investment plan for a fiscal year of the investment plan is automatically excluded by section 13 of the Regulations from being a selected listed financial institution for its following fiscal year. Amendments to section 7 and other provisions of the Regulations generally treat qualifying private investment plans similarly to qualifying small investment plans and generally allow for such a plan to elect to be a selected listed financial institution under section 14.

Subclause 53(1)
Definitions
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
7(1)

Existing subsection 7(1) contains a definition of "unrecoverable tax amount".

Subsection 7(1) is amended to add a definition of "qualifying master pension entity" for the purposes of section 7. A qualifying master pension entity is a master pension entity (as defined in subsection 123(1) of the Act) each unit (as defined in subsection 1(1) of the Regulations) of which is held by a private investment plan (as defined in subsection 1(1) of the Regulations), a pension entity (as defined in subsection 123(1) of the Act) or another master pension entity that is itself a qualifying master pension entity as defined by this subsection.

The new definition of "qualifying master pension entity" is deemed to have come into force on August 9, 2022.

Subclause 53(2)
Qualifying small investment plan
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
7(2)

Existing subsection 7(2) contains rules to determine if an investment plan is a qualifying small investment plan for a fiscal year of the investment plan.

Subsection 7(2) is amended to provide that an investment plan is a qualifying small investment plan for a fiscal year of the investment plan if it is not a qualifying private investment plan for the fiscal year (within the meaning of new subsection 7(3) of the Regulations).

The amendments to subsection 7(2) apply in respect of any fiscal year of a financial institution that ends after August 9, 2022.

Subclause 53(3)
Qualifying private investment plan
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
7(3) and (4)

New subsection 7(3) contains rules to determine if an investment plan that is a private investment plan, a pension entity or a master pension entity is a qualifying private investment plan for a fiscal year of the investment plan. These rules are similar to, and replace, rules that determined which pension entities and private investment plans were subject to the rule in now repealed section 13.

Paragraph 7(3)(a) applies to private investment plans and pension entities. It determines if an investment plan that is a private investment plan or a pension entity is a qualifying private investment plan for a particular fiscal year of the investment plan that ends in a particular taxation year of the investment plan. This determination is based on two tests that are applied for a specified taxation year and a specified fiscal year of the investment plan.

- If the particular fiscal year is, in the absence of the deeming rule in section 57 of the Regulations, the first fiscal year of the investment plan, then the specified taxation year is the particular taxation year and the specified fiscal year is the particular fiscal year.

- In any other case, the specified taxation year is the taxation year of the investment plan that precedes the particular taxation year and the specified fiscal year is the fiscal year of the investment plan that precedes the particular fiscal year.

The two tests that the investment must meet to be a qualifying provincial investment plan for the particular fiscal year are:

- throughout the specified taxation year, less than ten per cent of the total number of plan members of the financial institution are resident in participating provinces; and

- throughout the specified fiscal year, the following amount is less than $100 million:

    - In the case of a pension entity of a hybrid pension plan (part of which is a defined contribution plan and the other part of which is a defined benefit plan, as those terms are defined in subsection 1(1) of the Regulations), the sum of

        - the total value of the assets of the defined contribution pension plan that are reasonably attributable to the plan members of the pension entity resident in the participating provinces; and

        - the total value of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to the plan members of the pension entity resident in the participating provinces;

    - In the case of a pension entity of a defined benefit pension plan (other than a hybrid pension plan), the total value of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to the plan members of the pension entity resident in the participating provinces; and

    - In the case of a financial institution that is a private investment plan or a pension entity of a defined contribution pension plan (other than a hybrid pension plan),

the total value of the assets of the financial institution that are reasonably attributable to the plan members of the financial institution resident in the participating provinces.

Paragraph 7(3)(b) is similar to paragraph 7(3)(a) but it applies in the case of an investment plan that is a master pension entity. It determines if the master pension entity is a qualifying private investment plan for a particular fiscal year of the investment plan that ends in a particular taxation year of the investment plan. This determination is based on two tests that are applied for a specified taxation year and a specified fiscal year of the investment plan, which have the same description for the purposes of paragraph 7(3)(b) as their description (discussed above) for the purposes of paragraph 7(3)(a).

A master pension entity will be a qualifying private investment plan for the particular fiscal year if it is a qualifying master pension entity (as defined in subsection 7(1) of the Regulations) throughout the specified fiscal year, if the total participating provinces unit value (within the meaning of subsection 7(4) of the Regulations) of the master pension entity throughout the specified fiscal year is less than $100 million and if the participating provinces member percentage (within the meaning of subsection 7(4)) of the master pension entity throughout the specified fiscal year is less than ten per cent.

New subsection 7(4) of the Regulations contains interpretation rules that are used in paragraph 7(3)(b) of the Regulations for the purposes of determining if a master pension entity is a qualifying private investment plan for a fiscal year that ends in a taxation year of the master pension entity.

Paragraph 7(4)(a) determines the total participating provinces unit value of a particular qualifying master pension entity. The total participating provinces unit value of a qualifying master pension entity is generally the value of the units of the master pension entity that can be attributed to those individuals that are resident in participating provinces and that are plan members of a private investment plan or pension entity that directly or indirectly holds units of the master pension entity.

Specifically, the total participating provinces unit value of a particular qualifying master pension entity at any time is the total of all amounts, each of which is a specific amount that is determined for a person that is at that time both a unit holder of the particular qualifying master pension entity and either a pension entity of a pension plan, a private investment plan or another qualifying master pension entity.

- Where the unit holder is a pension entity of a hybrid pension plan (part of which is a defined contribution plan and the other part of which is a defined benefits plan), the specific amount is determined by multiplying the total value at that time of the units of

the particular qualifying master pension entity that are held by the pension entity by the amount that is determined by dividing

- the sum of the total value at that time of the assets of the defined contribution pension plan that are reasonably attributable to the plan members of the pension entity resident in the participating provinces and the total value at that time of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to the plan members of the pension entity resident in the participating provinces; by

- the sum of the total value at that time of the assets of the defined contribution pension plan and the total value of the actuarial liabilities of the defined benefits pension plan.

- Where the unit holder is a pension entity of a defined benefits pension plan but not a pension entity of a hybrid pension plan, the specific amount is determined by multiplying the total value at that time of the units of the particular qualifying master pension entity that are held by the pension entity by the ratio of the total value of the actuarial liabilities of the pension plan that are reasonably attributable to the plan members of the pension entity resident in the participating provinces.

- Where the unit holder is a private investment plan or is a pension entity of a defined contribution pension plan but not a pension entity of a hybrid pension plan, the specific amount is determined by multiplying the total value at that time of the units of the particular qualifying master pension entity that are held by the unit holder by the ratio of the total value of the assets of the unit holder that are reasonably attributable to the plan members of the unit holder that are resident in the participating provinces.

Paragraph 7(4)(b) determines the participating provinces member percentage of a particular qualifying master pension entity. The participating provinces member percentage of a qualifying master pension entity is generally the percentage of the total value of the units of the master pension entity that can be attributed to those individuals that are resident in participating provinces and that are plan members of a private investment plan or pension entity that directly or indirectly holds units of the master pension entity.

Specifically, the participating provinces member percentage of a particular qualifying master pension entity at any time is the amount determined by dividing the total value, at that time, of the units of the particular qualifying master pension entity by total of all amounts, each of is a specific amount that is determined for a person that is at that time both a unit holder of the particular qualifying master pension entity and either a pension entity of a pension plan, a private investment plan or another qualifying master pension entity.

- Where the unit holder is a pension entity or a private investment plan, the specific amount is determined by multiplying

    - the ratio of the total numbers of plan members of the pension entity or private investment plan that are at that time resident in the participating provinces, by

    - the total value at that time of the units of the particular qualifying master pension entity that are held at that time by the pension entity or the private investment plan.

- Where the unit holder is another qualifying master pension entity, the specific amount is determined by multiplying the total participating provinces percentage of the other qualifying master pension entity at that time by the total value at that time of the units of the particular qualifying master pension entity that are held at that time by the other qualifying master pension entity.

New subsections 7(3) and (4) apply in respect of any fiscal year of a financial institution that ends after Announcement Date.

Clause 54
Exception — qualifying investment plans
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
10

Existing section 10 of the Regulations provides that a financial institution that is a qualifying small investment plan (within the meaning of subsection 7(2) of the Regulations) is not a prescribed financial institution for the purposes of paragraph 225.2(1)(b) of the Act, and therefore not a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act), throughout a reporting period in a particular fiscal year of the financial institution if the financial institution is described by any of paragraphs 10(a), (b) or (c). Paragraph 10(a) requires that the financial institution was a qualifying small investment plan for the fiscal year of the financial institution that precedes the particular fiscal year and that the financial institution not have been a selected listed financial institution throughout that preceding fiscal year.

Section 10 is amended to provide that it is also applies to a qualifying private investment plan (within the meaning of new subsection 7(3) of the Regulations). As a result, a financial institution that is a qualifying private investment plan is not a prescribed financial institution throughout a reporting period in a particular fiscal year if the financial institution is described by any of paragraphs 10(a), (b) or (c).

Paragraph 10(a) is also amended. It now requires that the financial institution was either a qualifying small investment plan or a qualifying private investment plan - and was not a selected listed financial institution - for the fiscal year of the financial institution that precedes the particular fiscal year.

The amendments to section 10 apply in respect of any fiscal year of a financial institution that ends after August 9, 2022.

Clause 55
Exception — pension and private investment plans
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
13

Existing section 13 of the Regulations provides that a financial institution that is a pension entity or a private investment plan is not a prescribed financial institution for the purposes of paragraph 225.2(1)(b) of the Act, and therefore not a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act), throughout a reporting period in a fiscal year that ends in a taxation year of the financial institution if the financial institution it meets the conditions described in paragraphs 13(a) and (b).

Section 13 is repealed as part of a series of amendments to sections 7, 10, 14 and 15. A private investment plan or pension entity previously subject to the section 13 rule is now described as a qualifying private investment plan under new subsection 7(3) and is now permitted to make an election under amended subsection 14(1) to be a prescribed financial institution.

The repeal of section 13 applies in respect of any fiscal year of a financial institution that ends after August 9, 2022.

Clause 56
Election — prescribed financial institution
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
14

Existing section 14 of the Regulations generally allows an investment plan that is or reasonably expects to be a qualifying small investment plan (within the meaning of subsection 7(2) of the Regulations) for a fiscal year of the investment plan to make an election to potentially be a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act).

Section 14 is amended to also apply to an investment plan that is or reasonably expects to be a qualifying private investment plan (within the meaning of subsection 7(3) of the Regulations) for a fiscal year of the investment plan. The amendments to section 14 modify subsections 14(1) and (6).

The amendments to section 14 apply in respect of any fiscal year of a financial institution that ends after August 9, 2022.

Subclause 56(1)
Election — prescribed financial institution
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
14(1)

Existing subsection 14(1) of the Regulations allows an investment plan that is or reasonably expects to be a qualifying small investment plan for a fiscal year of the investment plan to make an election to be a prescribed financial institution for the purposes of paragraph 225.2(1)(b) of the Act, and therefore potentially a selected listed financial institution. However, to make the election, section 13 must not apply to the investment plan in respect of a reporting period in the fiscal year and no application by the investment plan under subsection 15(1) of the Regulations in respect of the fiscal year has been approved by the Minister of National Revenue.

Subsection 14(1) is amended as part of a series of amendments in respect of private investment plans and pension entities that were previously subject to the rule in now repealed section 13 that disqualified them from being prescribed investment plans. Subsection 14(1) is amended to remove the reference to section 13 and to now provide that such an investment plan (now described as a qualifying private investment plan under new subsection 7(3)) is now permitted to make an election under this subsection for a fiscal year of the investment plan to be a prescribed financial institution for the purposes of paragraph 225.2(1)(b), provided that no application by the investment plan under subsection 15(1) of the Regulations in respect of the fiscal year has been approved by the Minister of National Revenue.

Subclause 56(2)
Effect of early revocation
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
14(6)

Existing subsection 14(6) of the Regulations applies to an investment plan that is a qualifying small investment plan for a fiscal year of the investment plan. Subsection 14(6) provides that, if the Minister of National Revenue allows the investment plan to revoke an election made under subsection 14(1) on the first day of the fiscal year and if the fiscal year begins less than three years after the election became effective, the investment plan is not a prescribed financial institution for the purposes of paragraph 225.2(1)(b) of the Act, and therefore not a selected listed financial institution, in respect of any reporting period of the investment plan in the fiscal year.

Subsection 14(6) is amended so that is also applies to an investment plan that is a qualifying private investment plan for a fiscal year of the investment plan.

Clause 57
Small investment plan status
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
15

Existing section 15 of the Regulations generally allows an investment plan that may reasonably be expected to be a qualifying small investment plan (within the meaning of subsection 7(2) of the Regulations) for two successive fiscal years of the investment plan to, upon an application approved by the Minister of National Revenue, not be a prescribed financial institution for the purposes of paragraph 225.2(1)(b) of the Act, and therefore not be a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act), in respect of any reporting period in those two fiscal years.

Section 15 is amended to also apply to an investment plan that is or reasonably expects to be a qualifying private investment plan (within the meaning of new subsection 7(3) of the Regulations). The amendments to section 15 modify subsections 15(2) and (3).

The amendments to section 15 apply in respect of any fiscal year of a financial institution that ends after August 9, 2022.

Authorization
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
15(2)

Existing subsection 15(2) requires the Minister of National Revenue to, upon receipt of an application made by an investment plan under subsection 15(1) in respect of two successive fiscal years of the investment plan, consider the application and, if it is reasonable to expect that the investment plan will be a qualifying small investment plan for the two fiscal years, either approve the application or else refuse the application and notify the investment plan.

Subsection 15(2) is amended to provide that the Minister may approve or refuse to accept the application of an investment plan if it is reasonable to expect that investment plan will either be a qualifying private investment plan or a qualifying small investment plan for the two fiscal years that the application is in respect of.

Effect of authorization
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
15(3)

Existing subsection 15(3) applies if the Minister of National Revenue has approved an application made by an investment plan under subsection 15(1) in respect of two successive fiscal years of the investment plan. It provides that, for each of the two fiscal years, if the

investment plan is a qualifying small investment plan for that fiscal year, then the investment plan is not a prescribed financial institution for the purposes of paragraph 225.2(1)(b) of the Act in respect of any reporting period in that fiscal year.

Subsection 15(3) is amended to provide that, where the Minister has approved an application made by an investment plan under subsection 15(1) in respect of two successive fiscal years of the investment plan, then, for each of the two fiscal years, the investment plan is not a prescribed financial institution respect of any reporting period in that fiscal year if the investment plan is either a qualifying private investment plan or a qualifying small investment plan for that fiscal year.

Clause 58
Definitions
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
16(1)

Existing subsection 16(1) of the Regulations contains definitions that apply in Part 2 of the Regulations.

Amendments to subsection 16(1) modify the existing definition “plan merger” and add new definitions “continuing plan” and “predecessor”.

The amendments to subsection 16(1) apply in respect of any reporting period of a financial institution that ends after August 9, 2022.

Plan merger

Existing definition "plan merger" in subsection 16(1) of the Regulations means the merger or combination of two or more trusts, corporations or partnerships, each of which was, immediately before the merger or combination, a distributed investment plan and each of which is referred to in this definition as a "predecessor", to form one trust, corporation or partnership (referred to in this definition as the "continuing plan"), in such a manner that the merger or combination satisfies the conditions in paragraphs (a), (b) and (c) of the definition. Paragraph (a) requires that the continuing plan is a predecessor and is, immediately after the merger or combination, a distributed investment plan.

The definition of plan merger is amended so that a plan merger is no longer restricted to the merger or combination of two or more distributed investment plans to form a distributed investment plan. A plan merger is now the merger or combination of two or more “predecessors” — which, as defined in this subsection, may now be either a series of a stratified investment plan or a distributed investment plan — to form a continuing plan — which, as defined in this subsection, may now be either a series of a stratified investment plan or a distributed investment

plan, and which may or may not be a predecessor — in such a manner that the merger or combination satisfies the conditions in paragraphs (a), (b) and (c) of the definition.

Paragraph (a) is amended to provide that the requirement that the continuing plan is a predecessor only applies where the continuing plan and each of the predecessors is a distributed investment plan (i.e., not a series of a distributed investment plan). As a result, for example, the combination of Mutual Fund A and Mutual Fund B would only potentially be a plan merger if the continuing plan were either Mutual Fund A or Mutual Fund B. However, the combination of Series C and Series D would not be disqualified by paragraph (a) from being a plan merger if the continuing plan were new Series E rather than Series C or Series D.

Continuing plan

New definition "continuing plan" in subsection 16(1) of the Regulations applies in respect of a plan merger (as defined in this subsection). A continuing plan is generally the investment plan or the series of a stratified investment plan (as those terms are defined in subsection 1(1) of the Regulations) that is the result of the merger or combination or two or more predecessors (as defined in this subsection). More specifically, a continuing plan is either

- a trust, corporation or partnership that results from a merger or combination referred to in the definition of "plan merger" and that is, immediately after the merger or combination, a distributed investment plan (as defined in subsection 1(1) of the Regulations); or

- a series of a stratified investment plan if the series results from a merger or combination referred to in the definition of "plan merger" and the investment plan does not result from the merger or combination.

Predecessor

New definition "predecessor" in subsection 16(1) of the Regulations applies in respect of a plan merger (as defined in this subsection), as well as in subsections 30(4), 32(4), 33(3) and 34(3) of the Regulations. A predecessor is generally an investment plan or a series of a stratified investment plan that exists immediately before a plan merger and that participates in the plan merger by being merged or combined with one or more other investment plans or series to form a single series or investment plan (i.e., a continuing plan as defined in this subsection). More specifically, a predecessor is either

- a trust, corporation or partnership that participates in a merger or combination referred to in the definition of "plan merger" and that is, immediately before the merger or combination, a distributed investment plan; or

- a series of a stratified investment plan that participates in a merger or combination referred to in the definition of "plan merger", but only if the investment plan itself does not participate in the merger or combination.

For example, if a stratified investment plan is composed of two series, Series A and Series B, and if Series A but not Series B participates in a plan merger with a non-stratified investment plan, then Series A and the non-stratified investment plan will each be predecessors with respect to the plan merger. But if instead the stratified investment plan in its entirety participates in a plan merger with the non-stratified investment plan, then both the stratified investment plan and the non-stratified investment plan will each be predecessors in respect of the plan merger but Series A and Series B of the stratified investment plan will not be predecessors in respect of the plan merger even though they participate in the plan merger.

Clause 59
Determination of percentage
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
24(2)

Existing subsection 24(2) of the Regulations contains rules applying to an insurer (as defined in subsection 123(1) of the Act) governing the determination of such a financial institution's percentage for a particular period (as defined in subsection 16(1) of the Regulations) and for a particular participating province (as defined in subsection 123(1) of the Act).

Subsection 24(2) is amended to clarify that it does not apply to an insurer that is a bank, a credit union (as those terms are defined in subsection 123(1) of the Act) or an investment plan (as defined in subsection 1(1) of the Regulations).

The amendments to subsection 24(2) apply in respect of any reporting period of a financial institution that ends after August 9, 2022.

Clause 60
Trust and loan corporations
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
26

Existing section 26 of the Regulations contains rules applying to trust and loan corporations, trust corporations and loan corporations governing the determination of such a corporation's percentage for a particular period (as defined in subsection 16(1) of the Regulations) and for a particular participating province (as defined in subsection 123(1) of the Act).

The amendments to section 26 modify subsections 26(1) and (2).

The amendments to section 26 apply in respect of any reporting period of a financial institution that ends after August 9, 2022.

Determination of percentage
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
26(1)

Existing subsection 26(1) of the Regulations contains rules applying to a corporation that is a trust and loan corporation, a trust corporation or a loan corporation. Subsection 26(1) provides that such a corporation's percentage for a particular period and for a particular participating province is based on its gross revenue for the particular period of its permanent establishments in the particular participating province (as determined by subsection 26(2)).

Subsection 26(1) is amended to clarify that it does not apply to a corporation that is a trust and loan corporation, a trust corporation or a loan corporation if that corporation is also any of a bank, a credit union, an insurer (as those terms are defined in subsection 123(1) of the Act) or an investment plan (as defined in subsection 1(1) of the Regulations).

Determination of gross revenue
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
26(2)

Existing subsection 26(2) of the Regulations defines the term "gross revenue for the particular period of its permanent establishments in the participating province" for the purpose of subsection 26(1). Subsection 26(2) provides that a trust and loan corporation, a trust corporation or a loan corporation is to determine this gross revenue amount based in part on

- loans secured by land in the particular participating province;
- loans, not secured by land, made to persons resident in the particular participating province; and
- loans, other than certain loans secured by land, made to certain non-resident persons but administered by a permanent establishment of the corporation in the participating province.

Subsection 26(2) is amended to replace all references to "secured by land" with "secured by real property". As a result, subsection 26(2) now provides that the determination of the percentage for a particular period and for a particular participating province of a trust and loan corporation, a trust corporation or a loan corporation is now based in part on

- loans secured by real property (as defined in subsection 123(1) of the Act) in the particular participating province;

- loans, not secured by real property, made to persons resident in the particular participating province; and

- loans, other than certain loans secured by real property, made to certain non-resident persons but administered by a permanent establishment of the corporation in the participating province.

Clause 61
Determination of percentage
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
27.1

New section 27.1 of the Regulations generally applies where a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) changes its class of financial institution during a particular period (as defined in subsection 16(1) of the Regulations) of the financial institution. Section 27.1 generally provides that the financial institution's percentage for the particular period and for a participating province would be determined by a weighted average of the financial institution's percentages determined under any of sections 23 to 27 of the Regulations that apply to the financial institution during the particular period.

Specifically, section 27.1 applies if a selected listed financial institution

- is described in any one of subsections 24(2) (generally, an insurer), 25(1) (a bank or a credit union) and 26(1) (generally, a trust and loan corporation, a trust corporation or a loan corporation) during a part of a particular period of the financial institution; and

- is described in another of those subsections, or is not described in any of those subsections, during another part of the particular period.

Where section 27.1 applies to a financial institution, it provides that, despite sections 23 to 27 of the Regulations, the financial institution's percentage for the particular period and for a participating province is equal to the total of all amounts, each of which is an amount determined by dividing

- the amount determined for each of sections 23, 24, 25, 26 and 27, equal to the financial institution's percentage for the particular period and for the participating province as determined under section 23, 24, 25, 26 or 27, as the case may be, multiplied by

- in the case of sections 24, 25 or 26, the number of days, if any, in the particular period that the financial institution was described by respectively subsection 24(2), 25(1) or 26(1), or

- in the case of sections 23 (if a corporation) or 27 (if an individual), the number of days, if any, in the particular period that the financial institution was not described by any of subsections 24(2), 25(1) and 26(1),

by

- the number of days in the particular period.

An example where section 27.1 would be applicable would for example be the case where a financial institution that is a corporation ceases to be a bank (as defined in subsection 123(1) of the Act) 100 days into a particular period of the financial institution (i.e., a taxation year of the corporation) but its principal activity remains the lending of money, such that it would be a loan corporation for the remaining 265 days of the particular period. In this situation, the corporation's percentage for the particular period and for a participating province would be the sum of 100/365th of its percentage for the particular period and for the participating province determined under subsection 25(1) and 265/365th of its percentage for the particular period and for the participating province determined under subsection 26(1).

New section 27.1 applies in respect of any reporting period of a financial institution that ends after August 9, 2022.

Clause 62
Plan mergers
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
30(4)

Existing subsection 30(4) of the Regulations provides special rules that may apply to determine the percentage for a particular period and for a participating province of a particular series of a particular stratified investment plan where, among other conditions, the particular stratified investment plan is a continuing plan formed as a result of a plan merger (as defined in subsection 16(1) of the Regulations) that occurs on a particular day between two or more predecessors, each of which is an investment plan.

Paragraph 30(4)(a) applies where there is no election under section 50 (election for reconciliation) in respect of the particular stratified investment plan that is in effect throughout its transitional fiscal year (i.e., the fiscal year that includes the particular day of the plan merger). The effect of not making an election under section 50 is that the particular stratified investment plan will, for any of its reporting periods in the transitional fiscal year, be applying subsection

225.2(2) of the Act as adapted by subsection 48(1) of the Regulations for each participating province using its percentages determined for its preceding period (i.e., its particular period that precedes its particular period in which the transitional fiscal year ends). Paragraph 30(4)(a) provides a rule to determine the percentage for the particular series for a participating province and for the preceding period that includes an amount determined by a formula in respect of each predecessor. Element A of this formula is generally the percentage for the participating province of each predecessor immediately before the plan merger.

Subsection 30(4) is amended to reflect amendments to the definition "plan merger" that provide that a plan merger is no longer restricted to the merger or combination of two or more distributed investment plans to form a distributed investment plan and is now the merger or combination of two or more predecessors to form a continuing plan. A predecessor as now defined in subsection 16(1) of the Regulations may be either a distributed investment plan or a series of a distributed investment plan. Similarly, the continuing plan as now defined in subsection 16(1) may be either a distributed investment plan or a series of a distributed investment plan. As a result, amended subsection 30(4) now applies where a plan merger results in the formation of a continuing plan that is either

- a stratified investment plan that includes a series that is neither an exchange-traded series nor a provincial series; or

- a series of a stratified investment plan that is neither an exchange-traded series nor a provincial series.

Element A of the formula in paragraph 30(4)(a) is amended to address the situation where a predecessor of a continuing plan may be a series of a stratified investment plan. Amended subparagraph (iii) of element A applies in the case where the predecessor is a series of a stratified investment plan (i.e., the series participates in the plan merger but the stratified investment plan is not itself a predecessor). In this case, element A is

- if an election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province as of the last day on which that percentage is required to be determined for the purposes of subsection 225.2(2) of the Act, as adapted by subsection 48(2) of the Regulations, before the plan merger; and

- if no election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province for the last particular period of the stratified investment plan before the plan merger.

The amendments to subsection 30(4) apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

Clause 63
Plan mergers
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
32(4)

Existing subsection 32(4) of the Regulations provides special rules that may apply to determine the percentage for a particular period and for a participating province of a non-stratified investment plan where, among other conditions, the non-stratified investment plan is a continuing plan formed as a result of a plan merger (as defined in subsection 16(1) of the Regulations) that occurs on a particular day between two or more predecessors, each of which is an investment plan.

Paragraph 32(4)(a) applies where there is no election under section 50 (election for reconciliation) in respect of the non-stratified investment plan that is in effect throughout its transitional fiscal year (i.e., the fiscal year that includes the particular day of the plan merger). The effect of not making an election under section 50 is that the non-stratified investment plan will, for any of its reporting periods in the transitional fiscal year, be applying subsection 225.2(2) of the Act as adapted by subsection 48(3) of the Regulations for each participating province using its percentages determined for its preceding period (i.e., its particular period that precedes the particular period in which the transitional fiscal year ends). Paragraph 32(4)(a) provides a rule to determine the percentage for the non-stratified investment plan for a participating province and for the preceding period that includes an amount determined by a formula in respect of each predecessor. Element A of this formula is generally the percentage for the participating province of each predecessor immediately before the plan merger.

Subsection 32(4) is amended to reflect amendments to the definition “plan merger” that provide that a plan merger is no longer restricted to the merger or combination of two or more distributed investment plans to form a distributed investment plan and is now the merger or combination of two or more predecessors to form a continuing plan. A predecessor as now defined in subsection 16(1) of the Regulations may be either a distributed investment plan or a series of a distributed investment plan.

Element A of the formula in paragraph 32(4)(a) is amended to address the situation where a predecessor of a non-stratified investment plan may be a series of a stratified investment plan. Amended subparagraph (iii) of element A applies in the case where the predecessor is a series of a stratified investment plan (i.e., the series participates in the plan merger but the stratified investment plan is not itself a predecessor). In this case, element A is

- if an election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province as of the last day on which that percentage is required to be determined for the purposes of subsection

225.2(2) of the Act, as adapted by subsection 48(2) of the Regulations, before the plan merger; and

- if no election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province for the last particular period of the stratified investment plan before the plan merger.

The amendments to subsection 32(4) apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

Clause 64
Plan mergers
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
33(3)

Existing subsection 33(3) of the Regulations provides special rules that may apply to determine the percentage for a particular period and for a participating province of an exchange-traded series of a particular stratified investment plan where, among other conditions, the particular stratified investment plan is a continuing plan formed as a result of a plan merger (as defined in subsection 16(1) of the Regulations) that occurs on a particular day between two or more predecessors, each of which is an investment plan.

Paragraph 33(3)(a) applies where there is no election under section 50 (election for reconciliation) in respect of the particular stratified investment plan that is in effect throughout its transitional fiscal year (i.e., its fiscal year that includes the particular day of the merger). The effect of not making an election under section 50 is that the continuing plan will, for any of its reporting periods in the transitional fiscal year, be applying subsection 225.2(2) of the Act as adapted by subsection 48(1) of the Regulations for each participating province using its percentages determined for the preceding period of the particular stratified investment plan (i.e., its particular period that precedes the particular period in which the transitional fiscal year ends). Paragraph 33(3)(a) provides a rule to determine the percentage for the exchange-traded series for a participating province and for the preceding period that includes an amount determined by a formula in respect of each predecessor. Element A of this formula is generally the percentage for the participating province of each predecessor immediately before the plan merger.

Subsection 33(3) is amended to reflect amendments to the definition “plan merger” that provide that a plan merger is no longer restricted to the merger or combination of two or more distributed investment plans to form a distributed investment plan and is now the merger or combination of two or more predecessors to form a continuing plan. A predecessor as now defined in subsection 16(1) of the Regulations may be either a distributed investment plan or a series of a distributed investment plan. Similarly, the continuing plan as now defined in subsection 16(1) may be either a distributed investment plan or a series of a distributed investment plan. As a result, amended

subsection 33(3) now applies where a plan merger results in the formation of a continuing plan that is either

- a stratified investment plan that includes a series that is an exchange-traded series but not a provincial series; or

- a series of a stratified investment plan that is an exchange-traded series but not a provincial series.

Element A of the formula in paragraph 33(3)(a) is amended to address the situation where a predecessor of the continuing plan (the continuing plan being either the exchange-traded series or the stratified investment plan that includes the exchange-traded series) may be a series of a stratified investment plan. Amended subparagraph (iii) of element A applies in the case where the predecessor is a series of a stratified investment plan. In this case, element A is

- if an election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province as of the last day on which that percentage is required to be determined for the purposes of subsection 225.2(2) of the Act, as adapted by subsection 48(2) of the Regulations, before the plan merger; and

- if no election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province for the last particular period of the stratified investment plan before the plan merger.

The amendments to subsection 33(3) apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

Clause 65
Plan mergers
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
34(3)

Existing subsection 34(3) of the Regulations provides special rules that may apply to determine the percentage for a particular period and for a participating province of an exchange-traded fund where, among other conditions, the exchange-traded fund is a continuing plan formed as a result of a plan merger (as defined in subsection 16(1) of the Regulations) that occurs on a particular day between two or more predecessors, each of which is an investment plan.

Paragraph 34(3)(a) applies where there is no election under section 50 (election for reconciliation) in respect of the exchange-traded fund that is in effect throughout its transitional fiscal year (i.e., its fiscal year that includes the particular day of the merger). The effect of not

making an election under section 50 is that the exchange-traded fund will, for any of its reporting periods in the transitional fiscal year, be applying subsection 225.2(2) of the Act as adapted by subsection 48(3) of the Regulations for each participating province using its percentages determined for the preceding period of the exchange-traded fund (i.e., the particular period of the exchange-traded fund that precedes the particular period in which the transitional fiscal year ends). Paragraph 34(4)(a) provides a rule to determine the percentage for the exchange-traded fund for a participating province and for the preceding period that includes an amount determined by a formula in respect of each predecessor. Element A of this formula is generally the percentage for the participating province of each predecessor immediately before the plan merger.

Subsection 34(3) is amended to reflect amendments to the definition "plan merger" that provide that a plan merger is no longer restricted to the merger or combination of two or more distributed investment plans to form a distributed investment plan and is now the merger or combination of two or more predecessors to form a continuing plan. A predecessor as now defined in subsection 16(1) of the Regulations may be either a distributed investment plan or a series of a distributed investment plan.

Element A of the formula in paragraph 34(3)(a) is amended to address the situation where a predecessor of an exchange-traded fund may be a series of a stratified investment plan. Amended subparagraph (iii) of element A applies in the case where the predecessor is a series of a stratified investment plan. In this case, element A is

- if an election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province as of the last day on which that percentage is required to be determined for the purposes of subsection 225.2(2) of the Act, as adapted by subsection 48(2) of the Regulations, before the plan merger; and

- if no election under section 49 or 64 is in effect in respect of the series immediately before the plan merger, the percentage for the series and for the participating province for the last particular period of the stratified investment plan before the plan merger.

The amendments to subsection 34(3) apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

Clause 66
Specific adjustments
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
46

Section 46 of the Regulations contains prescribed amounts — for a reporting period of a selected listed financial institution in a fiscal year that ends in a taxation year of the financial institution and for a participating province — for the purpose of the description of G in the formula in subsection 225.2(2) of the Act. These amounts are added or deducted, as the case may be, in determining the net tax of the selected listed financial institution for the reporting period. Each paragraph of section 46 of the Regulations describes a prescribed amount that is the positive or negative amount determined by a formula. These prescribed amounts are contained in paragraphs 46(a) to (j).

Paragraphs 46(a) and (b) are amended as a consequence of the enactment of new subsection 172.1(8.01) and new section 172.11 of the Act (see notes relating to those provisions for more information). Specifically, element G_3 of the formula in paragraph 46(a) and the elements G_7 and G_{12} of the formula in paragraph 46(b) are amended. The amendments apply where the selected listed financial institution is a pension entity (as defined in subsection 123(1) of the Act).

Existing element G_3 of the formula in paragraph 46(a) is the total of certain amounts in respect of the federal component of tax. Clauses (C) and (D) of subparagraph (iii) of element G_3 describe amounts that the selected listed financial institution was required by paragraph 232.01(5)(c) or 232.02(4)(c) of the Act to pay to the Receiver General during the particular reporting period. Clause (C) is amended to reflect that paragraph 232.01(5)(c) of the Act may now apply in respect of a specified resource where tax in respect of a supply of the specified resource or part is deemed to have been paid under new paragraph 172.1(8.01)(b) of the Act by the financial institution. Similarly, clause (D) is amended to reflect that paragraph 232.02(4)(c) of the Act may now apply in respect of employer resources where tax in respect of supplies of the employer resources are deemed to have been paid under new paragraph 172.1(8.01)(b) of the Act by the financial institution.

Existing element G_7 of the formula in paragraph 46(b) is the total of certain amounts in respect of the federal component of tax determined for a reporting period of a selected listed financial institution. Subparagraph (iv) of element G_7 is currently all amounts each of which is an amount of tax that the selected listed financial institution was deemed to have paid during the reporting period under any of subsections 172.1(5) to (7.1) of the Act. Subparagraph (iv) is amended to also include all amounts each of which is an amount of tax that the selected listed financial institution is deemed to have paid during the reporting period under new subparagraph 172.1(8.01)(b)(i) of the Act.

Existing element G_{12} of the formula in paragraph 46(b) is the total of certain amounts in respect of the provincial component of tax that are described in subparagraphs (i) to (vii) of element G_{12} and that are determined for a reporting period of a selected listed financial institution. Element G_{12} is amended to include amounts in relation to the provincial component of tax that are described in new subparagraph (viii). Subparagraph (viii) applies to a pension entity in respect of a reporting period of the pension entity and describes all amounts, each of which is an amount that is

- in respect of an amount of tax that the pension entity is deemed to have paid during the reporting period under subparagraph 172.1(8.01)(b)(i) in respect of a supply that was deemed to have been made under any of subsections 172.1(5) to (7.1) of the Act; and

- determined by multiplying

    - the amount determined in respect of the supply for the pension entity for element B in the formula under whichever of paragraphs 172.1(5)(c), (5.1)(c), (6)(c), (6.1)(c), (7)(c) and (7.1)(c) is applicable in respect of the supply (i.e., the provincial component of tax in respect of the supply that a participating employer of the pension plan is deemed to have collected in respect of the supply);

    by the amount determined by dividing

    - the amount determined for element B in the formula in subparagraph 172.1(8.01)(b)(i)) in determining the amount of tax under that paragraph (i.e., the difference between the total tax determined in respect of the supply that the participating employer is deemed to have collected and the amount that had been accounted for in respect of the supply prior to the assessment by the Minister of National Revenue that resulted in the application of subsection 172.1(8.01));

    by

    - the amount determined for element C in the formula in subparagraph 172.1(8.01)(b)(i) in determining the amount of tax under that paragraph (i.e., the total tax determined in respect of the supply that the participating employer is deemed to have collected).

The amendments to paragraphs 46(a) and (b) apply in respect of any reporting period of a pension entity that ends after August 9, 2022.

Clause 67
Qualifying investor
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
52(1)

Existing subsection 52(1) of the Regulations contains definitions that apply for the rules in section 52 governing information sharing respecting persons holding units of distributed investment plans. Existing definition "qualifying investor" in subsection 52(1) is used in subsections 52(7), (9) and (10). A qualifying investor in a particular investment for a calendar year is a person that is an investment plan itself, that is a selected investor in the particular investment plan (as defined in this subsection) and that is described by any of paragraphs (a), (b) or (c) of the definition. Paragraph (a) requires that the person is neither a qualified small investment plan (within the meaning of subsection 7(2) of the Regulations) for the fiscal year of the person that includes September 30 of the calendar year in question nor an investment plan in respect of which section 13 applies for that fiscal year.

A consequential amendment is made to paragraph (a) of the definition "qualifying investor" as a result of the repeal of section 13 and the inclusion of certain investment plans previously subject to the rule in that section in the new term "qualifying private investment plan" in new subsection 7(3) of the Regulations. As a result, paragraph (a) now requires that the person is neither a qualified small investment plan nor a qualifying private investment plan for the fiscal year of the person that includes September 30 of the calendar year in question.

The amendment to the definition "qualifying investor" in subsection 52(1) applies in respect of any fiscal year of a person that ends after August 9, 2022.

Clause 68
Attribution point — new series or new non-stratified investment plan
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
58

Existing section 58 of the Regulations provides rules that may apply to determine the term "attribution point" in respect of a new series of a stratified investment plan or a new non-stratified investment plan for the purposes of Parts 2 and 5 of the Regulations.

Amendments to section 58 modify subsections 58(1) and (2).

The amendments to section 58 apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

New non-stratified investment plan — attribution point
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
58(1)

Existing subsection 58(1) provides rules that may apply to determine the term "attribution point" in respect of a new non-stratified investment plan for the purposes of Parts 2 and 5 of the Regulations. Specifically, subsection 58(1) applies where, in a fiscal year of a non-stratified investment plan that ends in a particular taxation year of the investment plan, new units of the investment plan are issued, distributed or offered for sale and immediately before the sale, distribution or offering, no units of the investment plan are issued and outstanding. Where subsection 58(1) applies in respect of the investment plan, paragraph 58(1)(a) provides that, despite the meaning of "attribution point" set in subsections 16(1) and 18(3) of the Regulations, the attribution point in respect of the investment plan for the taxation year of the investment plan that precedes the particular taxation year means the earlier of the day described in subparagraph 58(1)(a)(i) and the day described in subparagraph 58(1)(a)(ii). Subparagraph 58(1)(a)(ii) describes the day preceding the day on which a plan merger of the investment plan and one or more investment plans first occurs.

Subparagraph 58(1)(a)(ii) is amended to reflect amendments to the definition "plan merger" that provide that while a plan merger remains the merger or combination of two or more predecessors to form a continuing plan, a predecessor is no longer restricted to being a distributed investment plan and may also be a series of a distributed investment plan where the series but not the entire distributed investment plan participates in the plan merger. As a result, subparagraph 58(1)(a)(ii) now describes the day preceding the day on which a plan merger of the investment plan and one or more investment plans or series of investment plans first occurs.

New series — attribution point
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
58(2)

Existing subsection 58(2) provides rules that may apply to determine the term "attribution point" in respect of a new series of a stratified investment plan for the purposes of Parts 2 and 5 of the Regulations. Specifically, subsection 58(2) applies where, in a fiscal year of a stratified investment plan that ends in a particular taxation year of the investment plan, new units of a series of the investment plan are issued, distributed or offered for sale and immediately before the sale, distribution or offering, no units of the series are issued and outstanding. Where subsection 58(2) applies in respect of the series, paragraph 58(2)(a) provides that, despite the meaning of "attribution point" set in subsections 16(1) and 18(3) of the Regulations, the attribution point in respect of the series for the taxation year of the investment plan that precedes the particular taxation year means the earlier of the day described in subparagraph 58(2)(a)(i) and the day described in subparagraph 58(2)(a)(ii). Subparagraph 58(2)(a)(ii) describes the day

preceding the day on which a plan merger of the investment plan and one or more investment plans first occurs.

Subparagraph 58(2)(a)(ii) is amended to reflect amendments to the definition "plan merger" that provide that while a plan merger remains the merger or combination of two or more predecessors to form a continuing plan, a predecessor is no longer restricted to being a distributed investment plan and may also be a series of a distributed investment plan where the series but not the entire distributed investment plan participates in the plan merger. As a result, subparagraph 58(2)(a)(ii) now describes the day preceding the day on which a plan merger of either the investment plan or the series and one or more investment plans or series of investment plans first occurs.

Subsection 58(2) is also amended to generally update the wording in accordance with current legislative drafting standards.

Clause 69
New non-stratified investment plan — reconciliation method
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
59

Existing section 59 of the Regulations generally provides a rule whereby, if certain conditions are met, a new non-stratified investment plan may first estimate its interim net tax instalments for a transitional period of the investment plan running up until its choice of possible attribution dates, then determine its percentages for each participating province as of that attribution date so as to its actual net tax for the transitional period, and then reconcile these actual and interim amounts.

Where the conditions of section 59 are met by a new non-stratified investment plan, the rules in paragraphs 59(a) to (d) then apply to the investment plan. Subparagraph 59(a)(ii) provides a definition of "reconciliation day" that is used in paragraphs 59(b), (c) and (d). The reconciliation day is the earlier of the days set out in clauses 59(a)(ii)(A) and (B). Clause 59(a)(ii)(B) describes the describes the day preceding the day on which a plan merger of the investment plan and one or more investment plans first occurs.

Clause 59(a)(ii)(B) is amended to reflect amendments to the definition "plan merger" that provide that while a plan merger remains the merger or combination of two or more predecessors to form a continuing plan, a predecessor is no longer restricted to being a distributed investment plan and may also be a series of a distributed investment plan where the series but not the entire distributed investment plan participates in the plan merger. As a result, clause 59(a)(ii)(B) now describes the day preceding the day on which a plan merger of the investment plan and one or more investment plans or series of investment plans first occurs.

The amendments to clause 59(a)(ii)(B) apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

Clause 70
New series — reconciliation method
Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
62

Existing section 62 of the Regulations generally provides a rule whereby, if certain conditions are met, a new non-stratified investment plan may first estimate its interim net tax instalments for a transitional period of the investment plan running up until its choice of possible attribution dates, then determine its percentages for each participating province as of that attribution date so as to its actual net tax for the transitional period, and then reconcile these actual and interim amounts.

Where the conditions of section 62 are met in respect of a new series of a stratified investment plan, the rules in paragraphs 62(a) to (d) then apply to the series. Subparagraph 62 (a)(ii) provides a definition of "reconciliation day" that is used in paragraphs 62(b), (c) and (d). The reconciliation day is the earlier of the days set out in clauses 62(a)(ii)(A) and (B). Clause 62(a)(ii)(B) describes the describes the day preceding the day on which a plan merger of the investment plan and one or more investment plans first occurs.

Clause 62(a)(ii)(B) is amended to reflect amendments to the definition "plan merger". While a plan merger continues to be the merger or combination of two or more predecessors to form a continuing plan, the term "predecessor" is no longer restricted to being a distributed investment plan and may also be a series of a distributed investment plan where the series but not the entire distributed investment plan participates in the plan merger. Similarly, the term "continuing plan" is no longer restricted to being a distributed investment plan and may also be a series of a distributed investment plan. As a result, clause 62(a)(ii)(B) now describes the day preceding the day on which a plan merger of either the investment plan or the series and one or more investment plans or series of investment plans first occurs.

The amendments to clause 62(a)(ii)(B) apply in respect of any reporting period of an investment plan that ends after August 9, 2022.

Regulations Respecting Excise Licenses and Registrations

Clauses 72 to 76
Regulations Respecting Excise Licenses and Registrations
2, 4, 5, 10, 12

The *Regulations Respecting Excise Licenses and Registrations* (the Regulations) provide the requirements for applicants wishing to produce and distribute spirits, wine, tobacco, cannabis or vaping products. The Regulations require that certain conditions be met in order to obtain and maintain a licence or registration.

Existing subsection 2(2) of the Regulations provides that an applicant is eligible for a licence (other than a duty-free shop licence) if, among other things, they have not failed in the last 5 years to comply with an Act of Parliament, other than the *Excise Act, 2001*, or of the legislature of a province or territory respecting the taxation of, or controls on, alcohol, tobacco or vaping products or any regulations made under it. Subparagraph 2(2)(b)(i) is amended to also refer to an Act of Parliament, other than the *Excise Act, 2001*, or of the legislature of a province or territory respecting the taxation of, or controls on, cannabis products or any regulations made under it.

Existing section 4 of the Regulations sets out the duration of licences under the *Excise Act, 2001*. This section is amended to specify that a cannabis licence issued to a person is valid for up to five years from the date it becomes valid, but is no longer valid from the date that the licence or permit issued to the person under subsection 62(1) of the *Cannabis Act* expires.. The duration of a vaping product licence is up to 3 years and the duration of any other licence is up to 2 years.

Existing section 5 of the Regulations provides the requirements for posting security under the Act. Subsection 5(2) sets out the types of security that are acceptable for the purposes of paragraph 23(3)(b) of the *Excise Act, 2001*. Paragraph 5(2)(a) is amended to replace cash with a bank draft. Similarly, paragraph 5(2)(c) is amended to replace a Government of Canada bond with a Canada Post money order.

Existing section 10 of the Regulations provides conditions that must be met when a licence or registration is suspended. Existing subsection 10(1) is amended to add the following grounds for the suspension of a licence or a registration:

- the licensee or registrant fails to meet the requirements of section 2, 3, 6, 7 or 13 of the Regulations;
- the licensee or registrant fails to meet the conditions of the licence or registration;
- the licensee or registrant is bankrupt;
- the licensee or registrant ceases to carry on the business for which the licence or registration was issued;

- the licensee or registrant fails to comply with any Act of Parliament, other than the *Excise Act, 2001*, or of the legislature of a province or territory or territory respecting the taxation of or controls of alcohol, tobacco products, cannabis products or vaping products, or any regulations made under it; or

- the licensee or registrant acts to defraud Her Majesty.

Existing section 12 of the Regulations provides conditions that must be met when a licence or registration is cancelled. Paragraph 12(1)(e) provides that a ground for cancelling a licence or a registration is the failure to comply with any Act of Parliament, other than the Act, or of the legislature of a province or territory respecting the taxation of, or controls, on alcohol, tobacco products or vaping products, or any regulations made under it. Paragraph 12(1)(e) of the Regulations is amended to also provide that a ground for cancelling a licence or a registration is the failure to comply with any Act of Parliament, other than the Act, or of the legislature of a province respecting the taxation of, or controls, on cannabis products, or any regulations made under it.

These amendments come into force on royal assent.

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

Clauses 77 to 79
Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations
1, 3.6 to 3.9, 5.1

The *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* (the Regulations) provide rules relating to the stamping, marking and labelling of tobacco, cannabis and cannabis products.

The existing definition “case” in section 1 of the Regulations, when referring to tobacco products, means a corrugated cardboard box in which packages or cartons of tobacco products are packed, primarily for the purpose of transport and protection against damage. This definition is amended to specify that “case”, when referring to vaping products, means a corrugated cardboard box in which packages of vaping products are packed, primarily for the purpose of transport and protection against damage.

New section 3.6 of the Regulations provides that, for the purpose of paragraph 158.46(b) of the *Excise Act, 2001*, a package of vaping products that is manufactured by a vaping product licensee and that is entered into the duty-paid market must have the following information printed on it:

- the vaping product licensee's name and address;
- the vaping product licensee's licence number; or
- if the vaping products are packaged by the vaping product licensee for another person, the person's name and the address of their principal place of business.

New section 3.7 of the Regulations provides that, for the purpose of paragraph 158.47(a) of the *Excise Act, 2001*, a package of vaping products that is imported and that is entered into the duty-paid market must have the following information printed on it:

- the name and address of the manufacturer that packaged the vaping products;
- if the vaping product was imported by a vaping product licensee, the licensee's name and address or vaping product licence number; or
- if the vaping product was imported by a person other than a vaping product licensee, the person's name and address.

New section 3.8 of the Regulations provides that, for the purpose of paragraph 158.46(b) of the *Excise Act, 2001* and of paragraph 158.47(a) of that Act, a case of vaping products must have the following information printed on it:

- the number of packages in the case; and
- the volume of the vaping substance in liquid form, and the weight of the vaping substance in solid form, contained in each package.

New section 3.9 of the Regulations provides that, for the purpose subsections 158.5(1) and (2) of the *Excise Act, 2001*, a container of vaping products that is entered into an excise warehouse, or a container of imported vaping products that is delivered to an accredited representative or a customs bonded warehouse, must have the following information printed on it or affixed to it:

- for containers of vaping products manufactured in Canada, the information set out in new section 3.6 of the Regulations; and
- for containers of imported vaping products, the information set out in new section 3.7 of the Regulations.

The amendment to the definition “case” in section 1 of the Regulations and new sections 3.6 to 3.9 of the Regulations are deemed to have come into force on October 1, 2022.

New section 5.1 of the Regulations provides the requirements for service agreements between cannabis licensees in respect of cannabis products. New section 5.1 comes into force on royal assent.

The new definition “service agreement” in new subsection 5.1(1) of the Regulations means an agreement, containing information that is specified by the Minister of National Revenue, between a particular cannabis licensee (other than a cannabis licensee that is a producer of cannabis products solely because of their packaging of cannabis products) and another cannabis licensee under which the other cannabis licensee is to package, or affix a cannabis excise stamp to, cannabis products for the particular cannabis licensee.

New subsection 5.1(2) of the Regulations provides that a service agreement is an authorized service agreement from the effective date of its authorization under new subsection 5.1(5) until the effective date of the revocation of the authorization of the service agreement under new subsection 5.1(8) (see the commentary for those new subsections).

New subsection 5.1(3) of the Regulations provides that a cannabis licensee that is a party to a service agreement may apply to the Minister of National Revenue to have the service agreement authorized by the Minister.

New subsection 5.1(4) of the Regulations provides that an application for the authorization of a service agreement by the Minister of National Revenue shall be made in the manner authorized by the Minister, shall include a copy of the service agreement and shall be filed with the Minister in the manner authorized by the Minister.

New subsections 5.1(5) to (8) of the Regulations provides that the manner in which the Minister of National Revenue shall consider an application for the authorization of a service agreement. Subsection 5.1(5) of the Regulations provides that the Minister shall, with all due dispatch, consider the application, authorize or refuse to authorize the service agreement, and notify the applicant of the decision and, if applicable, the effective date of the authorization. Subsection 5.1(6) of the Regulations allows the Minister to, at any time, specify conditions in respect of an authorized service agreement. Subsection 5.1(7) of the Regulations requires that a party to an authorized service agreement to notify the Minister in writing without delay of the agreement’s termination and of any amendment to the agreement. Under that subsection, if the agreement is to be amended then the party must also make an application under subsection 5.1(3) for an authorization of the amended agreement. Under subsection 5.1(8) of the Regulations, the Minister may revoke the authorization of a service agreement if the Minister is of the opinion that a party to the agreement is in contravention of the agreement or of a condition imposed by the Minister under subsection 5.1(6) or if the Minister is of the opinion that the agreement is, or

is to be, no longer in effect. In that case, the Minister sends a notice of revocation to the parties with the revocation date.

New subsections 5.1(9) to (13) of the Regulations set out the effects of an authorized service agreement. An additional effect of an authorized service agreement is also set out in new section 4.1 of the *Excise Duties on Cannabis Regulations* (see the commentary for that new subsection).

New subsection 5.1(9) of the Regulations has the effect of allowing a party to an authorized service agreement to possess cannabis excise stamps that have been issued to the other party. In particular, it provides that, for the purposes of paragraph 158.05(2)(c) of the Act (unlawful possession of cannabis excise stamps), a prescribed person is a cannabis licensee that is a party to an authorized service agreement and that has in their possession cannabis excise stamps that

- are issued to the other cannabis licensee that is a party to the authorized service agreement; and
- are to be affixed to a packaged cannabis product in accordance with the authorized service agreement.

New subsection 5.1(10) of the Regulations has the effect of allowing a party to an authorized service agreement to enter into the duty paid market a cannabis product that has been packaged by the other party to the agreement. In particular, it provides that, for the purposes of new subparagraph 158.13(a)(ii) of the Act (see the commentary for that new subparagraph), a prescribed condition is that the cannabis product has been packaged by the other cannabis licensee (i.e., the other party) in accordance with the authorized service agreement.

New subsection 5.1(11) of the Regulations has the effect of allowing a party to an authorized service agreement to enter into the duty paid market a cannabis product that has been stamped by the other party to the agreement. In particular, it provides that, for the purposes of new subparagraphs 158.13(c)(ii) and (d)(ii) of the Act (see the commentary for those new subparagraphs), a prescribed condition is that the cannabis product has been stamped by the other cannabis licensee (i.e., the other party) in accordance with the authorized service agreement.

New subsection 5.1(12) of the Regulations provides that if the cannabis duty imposed on a cannabis product under section 158.19 of the *Excise Act, 2001*, or the additional duty imposed on a cannabis product under section 158.2 of that Act, is payable by a cannabis licensee that is a producer of the cannabis product solely because of their packaging of the cannabis product in accordance with an authorized service agreement, then the parties to the authorized service agreement are jointly and severally, or solidarily, liable for the payment of the duty and any interest or penalties in respect of that duty.

New subsection 5.1(13) of the Regulations provides that if the duty imposed under section 158.25 (taken for use) or 158.26 (unaccounted cannabis) of the *Excise Act, 2001* is payable by a cannabis licensee in respect of a cannabis product that, under an authorized service agreement, was transferred to the other cannabis licensee that is a party to the authorized service agreement, the parties to the authorized service agreement are jointly and severally, or solidarily, liable for the payment of the duty and any interest or penalties in respect of that duty.

Electronic Filing and Provision of Information (GST/HST) Regulations

Clause 81
Prescribed person
Electronic Filing and Provision of Information (GST/HST) Regulations
2(a)

Existing section 2 of the *Electronic Filing and Provision of Information (GST/HST) Regulations* lists the prescribed persons required under subsection 278.1(2.1) of the *Excise Tax Act* to file their returns electronically.

Paragraph 2(a) of the Regulations is amended to remove the existing requirement that the person's threshold amount as determined under subsection 249(1) of the Act exceed $1,500,000.

This amendment applies in respect of reporting periods that begin after 2023.

Excise Duties on Cannabis Regulations

Clauses 83 and 84
Excise Duties on Cannabis Regulations
4.1, 8 and 9

The *Excise Duties on Cannabis Regulations* (the Regulations) provide additional information relating to the excise duties that are to be determined under the *Excise Act, 2001*.

New section 4.1 of the Regulations relates to authorized services agreements between two cannabis licensees, as described is new section 5.1 of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* (see the commentary for that new section). If, under an authorized service agreement, a particular party to the agreement that produces cannabis products transfers those cannabis products to the other party to the agreement for the purpose of packaging them, new section 4.1 has the effect of ensuring the duty imposed on those cannabis products is payable by the particular party and not by the other party. In particular, new section 4.1 provides that a person meets prescribed conditions in respect of cannabis products, for the purposes of subsections 158.19(3), 158.19(4) and 158.2(2) of the *Excise Act, 2001* (see commentary for those subsections), if the person is a party to an authorized service agreement

(within the meaning of subsection 5.1(2) of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*) that transferred the cannabis products to the other party to the authorized service agreement for the purpose of packaging the cannabis products in accordance with the authorized service agreement.

Existing section 8 of the Regulations prescribes the specified provinces for the purposes of section 218.1 of the *Excise Act, 2001*. Section 218.1 provides that any person that contravenes section 158.11 of the Act (selling unstamped cannabis) or 158.12 of that Act (sale or distribution by a licensee) is guilty of an offence and is liable to a fine or imprisonment or both. Amended section 8 provides that Ontario, Saskatchewan, Alberta and Nunavut are prescribed specified provinces for the purposes of section 218.1.

Existing section 9 of the Regulations prescribes the specified provinces for the purposes of section. 233.1of the *Excise Act, 2001*. Section 233.1 provides that a cannabis licensee that contravenes section 158.13 of that Act (packaging and stamping of cannabis) is liable to a penalty. Amended section 9 provides that Ontario, Saskatchewan, Alberta and Nunavut are prescribed specified provinces for the purposes of section 233.1.

These amendments come into force on royal assent.

Underused Housing Tax Regulations

Clause 85
Underused Housing Tax Regulations

The *Underused Housing Tax Regulations* (the "Regulations") are proposed to be made under the *Underused Housing Tax Act* (the "Act"). These Regulations would implement the underused housing tax exemption for vacation/recreational properties that was announced in Economic and Fiscal Update 2021 on December 14, 2021 and would give the Canada Revenue Agency the authority to require individuals to provide their social insurance number, where applicable, in underused housing tax returns.

Section 2
Definitions, Prescribed Areas, Prescribed Condition

Under paragraph (m) of subsection 6(7) of the Act, tax is not payable by a person in respect of a residential property (as defined in section 2 of the Act) for a calendar year if the residential property is located in a prescribed area and prescribed conditions, if any, are met. Section 2 of the Regulations prescribe areas and a condition for the purposes of that paragraph.

Subsection 2(2) prescribes the followings areas:

- an area that is, as determined in the last census published by Statistics Canada before the calendar year, neither within a census metropolitan area (as defined in subsection 2(1) of the Regulations) nor within a specified census agglomeration (as defined in subsection 2(1)), and

- an area that is, as determined in the last census published by Statistics Canada before the calendar year, within a census metropolitan area or specified census agglomeration, and not within a population centre (as defined in subsection 2(1)).

Subsection 2(3) prescribes a condition for a calendar year and in respect of a person that is an owner of a residential property (as those terms are defined in section 2 of the Act) located in an area referred to in subsection 2(2). The prescribed condition is that the residential property is used as a place of residence or lodging by the owner or the owner's spouse or common-law partner for at least 28 days during the calendar year.

Subsections 2(2) and (3) apply to 2022 and subsequent calendar years.

Section 3
Social Insurance Number

Section 3 of the Regulations gives the Canada Revenue Agency the authority to require an individual to provide their Social Insurance Number in any return filed under the Act.

Section 3 comes into force or is deemed to come into force on December 31, 2022

Select Luxury Items Tax Regulations

Clause 87
Select Luxury Items Tax Regulations

Clause 87 of the *Legislative and Regulatory Proposals Relating to the Excise Tax Act, the Air Travellers Security Charge Act, the Excise Act, 2001, the Greenhouse Gas Pollution Pricing Act, the Underused Housing Tax Act and Related Legislation* would make the *Select Luxury Items Tax Regulations* (the 'Regulations') under the authority of the *Select Luxury Items Tax Act* ("the Act").

The Regulations are deemed to come into force on September 1, 2022.

Section 1
Definition of Act

Section 1 provides that, in the Regulations, the "Act" means the *Select Luxury Items Tax Act*.

Section 2
Exemption certificate – exportation of subject aircraft

Subsection 36(3) of the Act provides that an exemption certificate applies in respect of a sale of a subject item if circumstances prescribed by regulations exist. Section 2 of the Regulations would set out such circumstances in respect of a sale of a subject item for the purposes of subsection 36(3) of the Act.

Subsection (2) provides that an exemption certificate applies in respect of a sale of a subject aircraft by a vendor to a purchaser if the circumstances described in paragraphs (a) to (e) in this subsection exist. Paragraph (a) is satisfied if the vendor is a registered vendor in respect of subject aircraft at the particular time at which the sale is completed. Paragraph (b) is satisfied if the certificate is made in prescribed form containing prescribed information. Paragraph (c) is satisfied if the certificate contains the details specified in subparagraphs (i) to (iv), which are described below. Paragraph (d) is satisfied if the purchaser provides, in a manner satisfactory to the Minister, the certificate in respect of the sale to the vendor. Finally, paragraph (e) is satisfied if the vendor retains the certificate.

In order to satisfy paragraph (c), the certificate must contain the details set out in subparagraphs (i) to (iv). Subparagraph (i) requires that the certificate include the identification number of the subject aircraft. Subparagraph (ii) requires that the certificate include the following declarations by the purchaser:

- the subject aircraft is to be exported as soon after the particular time at which the sale is completed as is reasonable having regard to the circumstances surrounding the exportation, the sale and, if applicable, the normal business practice of the purchaser and vendor,

- the subject aircraft is not to be used in Canada at any time before the exportation except to the extent reasonably necessary or incidental to its manufacture, offering for sale, transportation or exportation, and

- the subject aircraft is not to be registered with the Government of Canada or a province before the exportation except if the registration is done solely for a purpose incidental to its manufacture, offering for sale, transportation or exportation,

Subparagraph (iii) requires that the certificate include a declaration by the purchaser that the purchaser is not a registered vendor in respect of subject aircraft at the particular time. Finally, subparagraph (iv) requires that the certificate include an acknowledgement by the purchaser that the purchaser is assuming liability to pay any amount of tax in respect of the subject aircraft that is or may become payable by the purchaser under the Act.

Subsection (3) applies in cases where a subject aircraft is sold by a vendor to more than one purchaser. In such cases, section 2 of the Regulations applies in respect of the sale of the subject aircraft only if an exemption certificate would apply, in the absence of subsection (3), in respect of each purchaser in accordance with subsection (2).

Section 3
Prescribed person – information returns

Subsection 59(1) of the Act provides that persons meeting certain conditions must file an information return for a reporting period of the person unless the person is a person prescribed by regulations.

Section 3 of the Regulations would provide that a person is a prescribed person for a reporting period of the person if the person meets two conditions. The first condition is that the person is a registered vendor in respect of subject vehicles throughout the reporting period. The second condition is that the person is not otherwise registered, or required to be registered, under Division 5 of the Act at any time during the reporting period.

Section 4
Tax not payable - agreements before 2022

Section 33 of the Act provides that tax under the Act in respect of a subject item is not payable if circumstances prescribed by regulations exist. Section 4 of the Regulations would set out such circumstances in respect of a subject item for the purposes of subsection 33 of the Act. As a result, in circumstances described in this new section 4, no tax will become payable under section 18, 20, 26 and 29 of the Act.

Section 18 of the Act generally provides that, subject to certain exceptions in the Act, luxury tax is payable in respect of a subject item if a vendor sells the subject item to a purchaser and the taxable amount of the subject item exceeds the price threshold. Section 20 of the Act generally provides that, subject to certain exceptions in the Act, luxury tax is payable on a subject item if it is imported into Canada and the taxable amount of the subject item exceeds the price threshold in respect of the subject item. Section 26 of the Act generally provides that, subject to certain exceptions in the Act, luxury tax is payable on a subject aircraft or subject vessel if it is used in Canada and the taxable amount of the subject item exceeds the price threshold in respect of the subject item. Section 29 of the Act applies following a sale of a subject item and provides that a

purchaser must pay luxury tax in respect of the subject item if tax became payable under section 18 of the Act and the purchaser makes improvements to the subject item which meets the conditions set out in section 29 of the Act.

Subsection 4(2) of the Regulations would provide that neither the tax under section 18 of the Act nor the tax under section 29 of the Act in respect of a subject item that is sold by a vendor to a purchaser is payable if the purchaser entered into an agreement in writing before 2022 with the vendor for the sale of the subject item in the course of the vendor's business of offering for sale that type of subject item.

Subsection 4(3) of the Regulations would provide that the tax under section 20 of the Act in respect of a subject item that is imported is not payable if the importer entered into an agreement in writing before 2022 with a vendor for the sale of the subject item in the course of the vendor's business of offering for sale that type of subject item.

Subsection 4(4) of the Regulations would provide that the tax under section 26 of the Act in respect of a subject item that is used in Canada at a particular time is not payable if a person entered into an agreement in writing before 2022 with a vendor for the sale of the subject item in the course of the vendor's business of offering for sale that type of subject item and the person is an owner of the subject item at the particular time.